

EXHIBIT A

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

Proceeding No.: 19-119
Bureau ID No.: EB-19-MD-002

2. Prior to holding the two previously mentioned positions, I was the Power Delivery Birmingham General Manager. I held that position from 2012-2016 and was responsible for the management of engineering, construction, maintenance, and operations for distribution within the Birmingham Division, which encompasses most of the Birmingham metro area. Additionally,

within my organization in Birmingham, I was responsible for the field aspect and day to day joint use and pole attachment operations for the most populated centers of Alabama Power's service territory in Jefferson and Shelby counties. From 2010-2012 I was the Planning Manager for Alabama Power, which included joint use and pole attachments. I have almost 28 years of experience working for Alabama Power, with 25 years in the Power Delivery side of the business.

3. I hold a Bachelor of Science degree in Electrical Engineering from Auburn University.

4. The facts set forth in this declaration are based on my personal knowledge, or knowledge available to me in my capacity as Power Delivery Technical Services General Manager at Alabama Power.

Alabama Power's System

5. Alabama Power serves approximately 1.4 million electric customers in the lower two-thirds of Alabama. Our service area includes population centers such as Mobile, Montgomery, Tuscaloosa, Birmingham, Anniston, Gadsden and Auburn, but also includes many rural and agricultural parts of the state. Alabama Power's service area does not include the northernmost part of the state, including Huntsville, Decatur, Florence or Ft. Payne. Exhibit A-1 to my declaration is a map that depicts our service area.

6. Alabama Power owns approximately 1.4 million distribution poles (roughly the same number of poles as electric customers). Pursuant to the joint use agreement attached as Exhibit 1 to the answer, AT&T is attached to approximately 630,000 of Alabama Power's poles. Alabama Power is attached to approximately 179,000 poles owned by AT&T pursuant to the joint use agreement. AT&T is, by far, Alabama Power's largest joint use partner in terms of the number of jointly used poles.

7. The purpose of the joint use agreement is for the parties to equitably share the costs of the jointly used network. It makes sense (financially, and for other reasons) for Alabama Power and AT&T to share a single network of poles as opposed to each constructing its own network of poles. The joint use agreement is structured such that minimal, if any, net rentals exchange hands so long as AT&T owns ████% of the jointly used network and Alabama Power owns ████% of the network. These were the cost allocations agreed upon by the parties in the original joint use agreement in 1978, and affirmed in amendments to Appendix B in 1984, 1990 and 1994. Copies of the original version of Appendix B, as well as the 1984 and 1990 amendment, are attached as Exhibits 2, 3 and 4 to the answer. The 1994 amendment to Appendix B, which is the current version, is part of the joint use agreement attached as Exhibit 1 to the answer.

8. Under the joint use agreement between Alabama Power and AT&T, the standard joint use pole is a 40-foot pole. In our overlapping service areas, unless AT&T declined joint use on a particular pole or pole line, Alabama Power built its distribution system with poles at least 40-foot in height in order to accommodate AT&T. Alabama Power does not need 40-foot poles for its own typical service requirements. If we did not have a joint use agreement with AT&T, we would not have built a network of 40-foot poles. We can typically meet our own service needs with 35-foot or shorter poles, and we would have built a network of 35-foot or shorter poles but for the joint use agreement with AT&T. It would have been imprudent to build the network with more capacity (and at higher cost) than necessary to serve Alabama Power's electric customers without the offsetting value of the cost sharing provisions in Appendix B of the joint use agreement.

9. Joint use poles were constructed over a time period that included various spacing requirements for a three phase line. At one time our distribution engineering design standard

required only 38” of space for a three-phase line. Under this standard, 30-foot poles would have been more than sufficient to meet our electric service needs. More recently, our distribution engineering design standard requires 84” of space for a three-phase line. Even under this standard, we would still be able to meet our own service needs with a 35-foot pole.

10. Alabama Power’s pole height data bears out my testimony in the paragraph above. The average pole height of a pole without attachments is less than [REDACTED] feet. For poles with attachments, the average height is almost [REDACTED] feet. Thus, the suggestion that Alabama Power built its pole networks without regard to its joint use agreements is incorrect.

11. Further, Alabama Power does not need “safety space” (also known as the “communication worker safety zone”) on its own poles. This space does not protect Alabama Power’s workers, contractors or facilities. It exists solely for the benefit of the communications attachers and was initially built into our network to accommodate joint users like AT&T. This is not space that serves the interest of Alabama Power’s electric customers. The cost associated with this space should be the responsibility of the communications attachers. Electric ratepayers in Alabama should not be required to bear the cost of pole space that is not necessary to provide them with electric service.

12. If Alabama Power had built a network of 30 and 35 foot poles, rather than building a network of 40-foot and taller poles to accommodate AT&T, AT&T would have been required to replace virtually every pole to which it sought access (or build its own, redundant network). This is an enormous advantage to AT&T under the joint use agreement as compared to Alabama Power’s CATV and CLEC pole license agreements. CATVs and CLECs take the pole as they find it. We do not build space into the network specifically to accommodate CATVs and CLECs.

AT&T’s Facilities

13. AT&T's complaint suggests that its attachments are no different than CATV and CLEC attachments. This is not the case. AT&T burdens Alabama Power's poles in a very different way than Alabama Power's CATV and CLEC licensees. CATV and CLEC licensees typically have only one attachment per pole. AT&T often has multiple attachments on a single pole, and its attachments are much thicker (due to bundling) than CATV and CLEC attachments. This thicker, heavier bundle results in significantly more sag at mid-span than most CATV and CLEC attachments. Even where these thicker, heavier bundles do not require more vertical space on a pole, they may require a higher class (stronger) pole. Under the joint use agreement, AT&T is not required to pay for additional strength needed beyond the standard class 5 pole. Examples of AT&T attachments to our poles are attached to my declaration as Exhibit A-2. The examples shown in these photographs are common throughout our service area.

14. In addition to the manner in which AT&T occupies space on Alabama Power's poles, AT&T also enjoys numerous other net benefits, many of which were outlined in the July 19, 2018 letter that we sent to AT&T. One net benefit that we did not outline in that letter is the benefit of AT&T being able to remain attached to Alabama Power's poles even in the event of a termination (including termination for default). Alabama Power would never have negotiated an agreement like the AT&T joint use agreement if the most Alabama Power could recover from the counterparty was an amount consistent with Alabama Power's one-foot pole attachment rate for CATVs and CLECs (generally in the \$■ to \$■ range).

15. AT&T claims in its complaint that it inspects its facilities, but that does not appear to be the case based on my observations and knowledge of field conditions. It is almost impossible to drive more than 5 minutes in the Birmingham area (where I live and work) where AT&T is deployed overhead and not see AT&T lines with violations (Exhibit A-2, Example Locations 1, 2,

3, 4, 5, 6, 7) overloading issues (Exhibit A-2, Example Locations 2, 7, 10, 11, 12) or transfer delays (Exhibit A-2, Example Locations 1, 3, 12, 13) on Alabama Power poles. Further, AT&T has an atrocious record on inspecting, maintaining and replacing its own pole plant in our service area. For example, AT&T is not performing ground line inspections of its poles which means that Alabama Power performs this work in order to maintain the integrity of our electric system on AT&T's poles. AT&T also routinely fails to make timely transfers and rearrangements. It is very frustrating that AT&T is challenging the cost-sharing arrangements in Appendix B given the benefits they receive under the agreement and the operational manner in which they take advantage of Alabama Power. The cost sharing arrangement in Appendix B is the one thing—maybe the only thing—that makes sense for Alabama Power in the entire agreement. Without the Appendix B cost sharing methodology, the joint use agreement is a negative value to Alabama Power.

Discussions With AT&T Regarding the Appendix B Cost-Sharing Methodology

16. AT&T first raised an issue with the cost-sharing arrangement in Appendix B to the joint use agreement by letter dated March 7, 2018, a copy of which is attached to Alabama Power's answer as Exhibit 9. Prior to that time, I am not aware of any instance in which AT&T had contended or even suggested that there was anything unfair or unreasonable about Appendix B.

17. The first meeting with AT&T about the issues raised in the March 7, 2018 letter was held on June 1, 2018 at Alabama Power's headquarters in Birmingham. I was present at the June 1, 2018 meeting. Also present at that meeting on behalf of Alabama Power were Bobby Hawthorne (Distribution Engineering Services Manager), Sherri Morgan (Joint Use Team Leader) and Eric Brasher (Joint Use Specialist). The Alabama Power team at this meeting was not only familiar with the joint use agreement, but also familiar with the details of the operating relationship between the parties. Attending on behalf of AT&T were Kyle Hitchcock and Dan Rhinehart. My

understanding was that neither Mr. Hitchcock nor Mr. Rhinehart lived or worked in Alabama, and neither of them seemed at all familiar with the actual operating relationship between the parties.

18. At the meeting, Alabama Power asked if AT&T was interested in returning to parity of ownership through a pole purchase or transfer. Mr. Hitchcock pretty much scoffed at the idea. At no time during the discussion between the parties has AT&T ever expressed a willingness to own more poles under any scenario.

19. The June 1, 2018 discussions were unproductive mainly, from my perspective, because AT&T insisted that the operational provisions of the joint use agreement had nothing to do with the cost-sharing provisions of the joint use agreement. AT&T was unwilling to discuss any of the operational provisions in the joint use agreement and insisted on discussing only the cost sharing provisions in Appendix B (what AT&T referred to as the “pole attachment rate”). From our perspective, though, these two things are closely connected if not inextricably intertwined. Though AT&T demanded a new cost-sharing proposal from Alabama Power within two weeks of the June 1, 2018 meeting, we told AT&T in unambiguous terms that it was highly unlikely AT&T would receive any kind of new proposal within that time period.

20. On June 15, 2018, we transmitted to AT&T a copy of our standard CLEC pole license agreement template. A copy of that agreement and the email transmittal is attached as Exhibit 12 to the answer. We provided this template to AT&T pursuant to its request and so that AT&T could see how Alabama Power’s CLEC pole license agreements differ from the joint use agreement with AT&T. The template agreement includes an “Exhibit A” which explains in detail how the pole attachment rates for Alabama Power’s CATV and CLEC licensees are calculated.

21. On June 26, 2018, AT&T requested additional data from Alabama Power. We responded with a letter dated July 19, 2018, which, among other things (1) provided AT&T with

the cost data necessary to calculate Alabama Power's CATV and CLEC pole attachment rates, (2) outlined the advantages in AT&T's joint use agreement as compared to Alabama Power's CATV and CLEC pole license agreements, (3) provided copies of two actual, executed pole license agreements with a CATV and a CLEC licensee (attached to the answer as Exhibits 5 and 6), (4) sought certain limited pieces of data from AT&T to better inform Alabama Power's preparation of a revised cost-sharing proposal, and (5) offered AT&T a reciprocal pole license agreement on a going-forward basis. A copy of that July 19, 2018 letter is attached as Exhibit 14 to the answer. The CATV and CLEC agreements that we provided to AT&T were representative agreements. They were not "cherry picked" as AT&T alleges in its complaint.

22. AT&T responded to our letter on August 16, 2018 (a copy of which is attached as Exhibit 15 to the answer) but did not even mention (let alone address) our modest request for data. On September 11, 2018, after already providing rate information and exemplar CATV and CLEC pole license agreements pursuant to AT&T's request, Alabama Power wrote to AT&T again asking for certain limited pieces of data, as well as clarification on certain key issues in connection with the operational provisions of the joint use agreement.

23. After our September 11, 2018 letter, we did not hear anything from AT&T until January 31, 2019 when Ms. Diane Miller of AT&T contacted me via telephone. Ms. Miller stated that she had recently taken over responsibility for the negotiations after an unexpected departure by Kyle Hitchcock and wanted to set a meeting date to continue the discussions initiated by Mr. Hitchcock. Ms. Miller told me in that conversation that she did not have copies of the correspondence between the parties from 2018. We then sent Ms. Miller copies of the correspondence.

24. On February 4, 2019 Ms. Miller and I confirmed (via email) a meeting date for

February 22, 2019. On February 6, 2019, I spoke to Ms. Miller over the telephone again. During this call, I outlined the status of the discussions between the parties and identified the data Alabama Power was requesting in order to prepare a proposed, revised cost-sharing methodology.

25. After the February 6, 2019 telephone conversation, I sent an email to Ms. Miller again identifying the data points Alabama Power was seeking in connection with the discussions. A copy of that email is attached to the answer as Exhibit 17. Between February 8, 2019 and February 21, 2019, I had further email communication with Ms. Miller leading up to the scheduled February 22, 2019 meeting, copies of which are attached as Exhibits 18-21 to the answer. The most troubling part of this string of communication was Ms. Miller's February 15, 2019 e-mail which said, "I trust you will make good on your commitment to provide AT&T an offer at the meeting or beforehand." I never made this commitment. Further, I specifically told Ms. Miller in our telephone conversations and via email on February 6, 2019 that we needed the requested data before making such a proposal. I do not know whether this was an honest mistake on Ms. Miller's part or an attempt to paper the record with false information. The polite nature of my email response to Ms. Miller on February 21, 2019 was an attempt to continue good faith discussions and belied how angry I was that Ms. Miller had tried to put words in my mouth.

26. On February 22, 2019, we met with AT&T again at our headquarters in Birmingham. Like the first meeting with AT&T on June 1, 2018, not a single AT&T representative in-person or on the telephone lived or worked in Alabama or, for that matter, seemed to have any familiarity with the operational relationship between the parties. AT&T spent the vast majority of the meeting with Dan Rhinehart asking detailed accounting questions about the manner in which Alabama Power calculates annual pole cost for purposes of calculating the CATV and CLEC pole attachment rates. The only information AT&T shared in this meeting was that its annual pole cost

was “approximately” \$60. Alabama Power again asked AT&T why it was so reluctant to discuss any changes in the operating relationship to bring AT&T more in line with Alabama Power’s CATV and CLEC licenses. Ms. Miller said it was because “we are not a CLEC” and that AT&T did not want an agreement like that. There were no offers or demands exchanged at the February 22, 2019 meeting, other than AT&T repeating its demand to be given the one-foot CLEC rate yet retain the other provisions of the existing joint use agreement.

27. Because Alabama Power was anticipating a conversation about the going-forward relationship rather than one-way questioning about the accounting details of Alabama Power’s CATV and CLEC pole attachment rates, we were not able to answer all of AT&T’s questions. We did answer as many accounting questions as we could. At the end of the meeting, AT&T agreed to reduce its remaining accounting questions to writing so that Alabama Power could provide responses. Alabama Power agreed that, after responding to AT&T’s supplemental accounting inquiries, it would provide a proposed revision to the cost-sharing methodology. Alabama Power further committed that its proposed revisions to the cost-sharing methodology would involve a net financial benefit for AT&T. We also told AT&T that the proposal would be accompanied by several operation items of importance to Alabama Power.

28. AT&T transmitted its remaining accounting questions to us on February 25, 2019 and we responded on March 15, 2019. Copies of those email exchanges are attached as Exhibits 22 and 23 to the answer. In hindsight, my impression was that AT&T did not come to Birmingham to negotiate in good faith. They came to ask questions about our CATV and CLEC pole attachment rates for purposes of preparing their complaint against us.

29. On March 22, 2019, as promised, we transmitted a new cost-sharing proposal to AT&T along with proposed resolutions for seven operational issues we had raised at the February

22, 2019 meeting. A copy of that proposal is attached as Exhibit 24 to the answer. AT&T responded to the proposal on March 28, 2019, a copy of which is attached as Exhibit 25 to the answer. AT&T's response not only continued to make the exact same demand AT&T had been making since June 1, 2018, but the response also addressed only one of the seven operational issues raised in our March 22, 2019 proposal.

30. On April 3, 2019, I called Ms. Miller to discuss the status of the negotiations. During that call I communicated to Ms. Miller that it would be more conducive to further negotiations if AT&T would address the important operational issues raised by Alabama Power in its March 22, 2019 proposal. Ms. Miller said that she would communicate with her team and see if they could make an additional offer that addressed some or all of the operational items in the March 22, 2019 proposal. We were waiting to hear back from AT&T regarding the substance of my April 3, 2019 conversation with Ms. Miller when we were served with AT&T's complaint.

31. In Ms. Miller's affidavit she states that I rejected the March 28, 2019 counteroffer made by AT&T, which is true. However, Ms. Miller also claims that I said Alabama Power was not providing a counteroffer. This is the complete opposite of the conversation. I told Ms. Miller I would be traveling the remainder of the day on April 3rd, but would be in the office on April 4th and April 5th for her to contact me regarding an additional proposal addressing some of the operational issues. I ended the conversation by reemphasizing with Ms. Miller that we wanted to continue negotiations.

32. I do not believe that AT&T was ever dealing with us in good faith. AT&T refused on numerous occasions to discuss any operational aspect of the joint use agreement and was dismissive about the issues we raised for discussion. It was almost as if the 809,000 actual poles shared by the parties were an afterthought to AT&T. To call what we had with AT&T a

“discussion” or a “negotiation” may be an overstatement because from my perspective, all AT&T ever said was “we are entitled to the new telecom rate.” AT&T never engaged in any thoughtful discussion of what that meant (in terms of space allocation) or any other alternative. Both Mr. Hitchcock and Ms. Miller simply stated that AT&T only uses 1 foot of space on Alabama Power’s poles, which is not true.

33. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 20th day of June, 2019.



Pamela O. Boyd
Power Delivery Technical Services General Manager
Alabama Power Company

EXHIBIT A-1

PUBLIC VERSION

APC000040



Alabama Power

Alabama Power Company Service Territory



EXHIBIT A-2



Example Location 1	
[REDACTED]	
[REDACTED]	
Pole tag : [REDACTED]	2 AT&T attachments
Pole Height: 50'	3 other attachment
Highest AT&T attachment	28'0"
Lowest AT&T attachment	25'1"
Lowest AT&T midspan point	6'4"
Space Occupied	18'9"



Example Location 2	
Pole tag :	1 AT&T attachments
Pole Height: 50'	2 other attachment
Highest AT&T attachment	18'6"
Lowest AT&T attachment	
Lowest AT&T midspan point	7'3"
Space Occupied	11'3"



Example Location 3	
[REDACTED]	
Pole tag	[REDACTED]
Pole Height: 40'	2 AT&T attachments 1 other attachment
Highest AT&T attachment	20'10"
Lowest AT&T attachment	19'6"
Lowest AT&T midspan point	8'4"
Space Occupied	12'6"



Example Location 4	
[REDACTED]	
Pole tag [REDACTED]	1 AT&T attachments
Pole Height: 55'	2 other attachment
Highest AT&T attachment	27'2"
Lowest AT&T attachment	-
Lowest AT&T midspan point	16'7"
Space Occupied	10'5"



Example Location 5	
[REDACTED]	
Pole tag [REDACTED]	3 AT&T attachments
Pole Height: 55'	3 other attachment
Highest AT&T attachment	21'6"
Lowest AT&T attachment	20'3"
Lowest AT&T midspan point	10'5"
Space Occupied	11'1"



Example Location 6	
Pole tag : [REDACTED]	2 AT&T attachments
Pole Height: 50	1 other attachment
Highest AT&T attachment	19'0"
Lowest AT&T attachment	18'5"
Lowest AT&T midspan point	10'10"
Space Occupied	8'2"



Example Location 7	
Pole tag :	3 AT&T attachments
Pole Height: 40	1 other attachment
Highest AT&T attachment	20'1"
Lowest AT&T attachment	17'10"
Lowest AT&T midspan point	11'9"
Space Occupied	8'4"

PUBLIC VERSION



Example Location 8	
Pole tag :	6 AT&T attachments
Pole Height: 55	0 other attachment
Highest AT&T attachment	30'4"
Lowest AT&T attachment	26'0"
Lowest AT&T midspan point	19'3"
Space Occupied	11'1"



Example Location 9	
[REDACTED]	
Pole tag : [REDACTED]	5 AT&T attachments
Pole Height: 40	1 other attachment
Highest AT&T attachment	22'10"
Lowest AT&T attachment	19'1"
Lowest AT&T midspan point	17'6"
Space Occupied	5'4"



Example Location 10	
[REDACTED]	
Pole tag : [REDACTED]	1 AT&T attachment 1 other attachment
Highest AT&T attachment	30'5"
Lowest AT&T attachment	27'3"
Lowest AT&T midspan point	16'5"
Effect allocated space	14'0"



Example 11	
Pole tag :	4 AT&T attachments
Pole Size : 50	1 other attachment
Highest AT&T attachment	21'3"
Lowest AT&T attachment	19'1"
Lowest AT&T midspan point	18'0"
Effect allocated space	3'3"



Example 12	
Pole tag : [REDACTED]	2 AT&T attachments
Pole Size : 50	2 other attachment
Highest AT&T attachment	20'8"
Lowest AT&T attachment	18'9"
Lowest AT&T midspan point	17'5"
Effect allocated space	3'3"



Example 13	
Pole tag : [REDACTED]	1 AT&T attachments
Pole Size : 50	2 other attachment
Highest AT&T attachment	22'3"
Lowest AT&T attachment	
Lowest AT&T midspan point	20'2"
Effect allocated space	2'1"

EXHIBIT B

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

Proceeding No.: 19-119
Bureau ID No.: EB-19-MD-002

APC000056

Regulatory Costing and Accounting Finance Treasury (“AFT”) organizations. I held that position from 2003 until I assumed my current position. I started my career at Southern Company in 1990 working in various engineering and business roles at Southern Company Services (*Farley Engineering Design, Vogtle Engineering Design, Substation Design, Consulting and Testing Services, Fuels, Generation Planning, Energy Trading Floor, and Wholesale Energy*) and Southern Nuclear [*Plant Farley, Southern Nuclear Corporate*].

3. I hold a Bachelor of Science degree in Electrical Engineering from the University of Alabama (1992), and Master’s degrees in Electrical Engineering (2002) and Business Administration (1999) from the University of Alabama at Birmingham. Currently, I am at all but dissertation status (“ABD”) for completing my Interdisciplinary Engineering Ph.D. (engineering/business school cross disciplines) from the University of Alabama at Birmingham – projected completion August 2020.

4. The facts set forth in this declaration are based on my personal knowledge, or knowledge available to me in my capacity as the Senior Regulatory Analyst at APC.

5. As referenced above, one of my job responsibilities is preparation of the annual rate calculations applicable to APC’s CATV and CLEC pole attachment licensees. The calculation of this rate is based on a modified/clarified version of the FCC’s rate formulas. Those modifications and clarifications are set forth in Exhibit A to APC’s CATV and CLEC pole license agreements, and I understand from my predecessor that those modifications/clarifications were part of an agreement reached between APC and the state cable and telecom association in or around 2006.

6. The annual attachment rates are updated each year in the spring, based on the availability of the FERC Form 1 data for the year ending December 31 of the preceding year. The rates are calculated using the updated data from FERC Form 1, along with other data (such as

updated pole inventory and updated weighted cost of capital).

7. As part of its response to AT&T's First Set of Interrogatories, APC prepared and attached summary sheets for its calculations of the rates applicable to CATV and CLEC licensees for the years 2011 through 2017. The 2011 rates, for example, were based on year ending December 31, 2010 data. These summary sheets, along with the supporting cost of capital calculations, are attached to my declaration for reference as Exhibit B-1.

8. APC's CATV and CLEC rates, based on a presumed one-foot of usable space occupied, for the 2011-17 billing years, are as follows:

	2011	2012	2013	2014	2015	2016	2017
CATV							
CLEC							

9. For The 2018 and 2019 billing years, Alabama Power's CATV and CLEC rates, based on a single attachment occupying one foot of usable space, are as follows:

	2018	2019
CATV		
CLEC		

The figures above are based on an annual pole cost, calculated in accordance with Exhibit A to APC's CATV and CLEC license agreements of (year ending 2017 data) and (year ending 2018 data).

10. If the one-foot CLEC rate is multiplied by (to account for a licensee assigned feet of usable space occupied), the rates would be as follows:

2011	2012	2013	2014	2015	2016	2017

For the years 2011 through 2014, I have used the one-foot CATV rate because those years preceded the time at which the CATV and CLEC rates came into rough equivalency.

11. I am also very familiar with what is called the pre-existing telecom rate formula and many of my prior calculations have included calculations under this formula. The only difference between the pre-existing telecom formula and the CATV formula is the manner in which the costs are allocated. The costs themselves are the same.

12. If a CLEC licensee was assigned feet of usable space, and if we assume an average of attaching entities, then the pre-existing telecom rate would be as follows for the years 2011 through 2017:

2011	2012	2013	2014	2015	2016	2017

13. The calculations above assign [REDACTED] of the annual carrying cost of a pole to the CLEC licensee occupying feet of usable space. The basis of this percentage is as follows. First, for purposes of determining the portion of unusable space allocated to the CLEC licensee, 2/3 of the presumed unusable space on a pole is divided by the average number of attaching entities. The presumed unusable space is 24 feet, meaning that 2/3 of that amount is 16 feet. When 16 feet is divided by (the number of attaching entities assumed in the above calculation), it yields feet. Second, the usable space occupied is added to the allocation of unusable space. This means that feet is added to feet, for a total of [REDACTED] feet, which is then divided by the presumed pole height of 37.5 feet [REDACTED]/37.5 = [REDACTED].

14. I have reviewed the affidavit of Daniel Rhinehart and the exhibits accompanying his affidavit. Though many elements on Mr. Rhinehart's calculation of the one-foot new telecom rate are correct, several important parts of it are not. First, Mr. Rhinehart's calculations deduct

accumulated deferred taxes from the net plant figures. This is not appropriate because APC's cost of capital includes deferred taxes as a zero cost item. Deducting deferred taxes from the net plant figures would be a "double dip." Second, Mr. Rhinehart's calculations omit the portion of overhead grounds that is included in the CATV and CLEC rates per Exhibit A to the CATV and CLEC pole license agreements.

15. If AT&T had paid the pre-existing telecom rate, as shown above in paragraph 12, and if APC had paid the "proportional" pre-existing telecom rates proposed by Mr. Rhinehart in his affidavit, it would have resulted in AT&T paying [REDACTED] more than it actually paid under the joint use agreement between 2012 and 2017. A chart setting forth this calculation on an annual basis is attached as Exhibit B-2 to my declaration.

16. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 20th day of June, 2019.

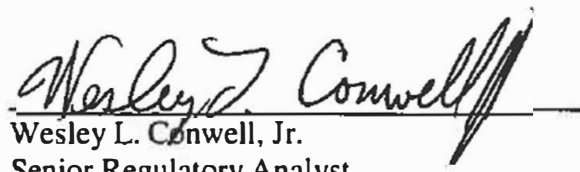

Wesley L. Conwell, Jr.
Senior Regulatory Analyst
Alabama Power Company

EXHIBIT B-1

Confidential

ENTIRE EXHIBIT DESIGNATED CONFIDENTIAL

EXHIBIT B-2

Confidential

ENTIRE EXHIBIT DESIGNATED CONFIDENTIAL

EXHIBIT C

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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APC000076

standards and provided training and support to our distribution engineering staff across the state. I held that position from August 2013 until I assumed my current position.

3. I hold a Bachelor of Science degree in Biosystems Engineering from Auburn University.

4. The facts set forth in this declaration are based on my personal knowledge, or knowledge available to me in my capacity as Joint Use Team Leader at Alabama Power Company.

Pole Space Occupied By AT&T

5. The joint use agreement between Alabama Power and AT&T allocates feet of space to AT&T and allows AT&T to use more than its allocated space. Based on my experience and observations, AT&T regularly uses or exceeds its allocated space on Alabama Power's poles. Rather than relying on experience and observation, we undertook an analysis of available data to ascertain, on average, how much space AT&T is occupying on Alabama Power's poles.

6. For the past several years, Pike Engineering has been our pole attachment survey contractor. When we receive an application for pole attachments from a CATV or CLEC licensee, Pike Engineering actually goes out into the field and takes measurements of the existing facilities on the poles for purposes of determining whether and what make-ready is required to accommodate the third party attachment.

7. Pursuant to my request, Pike Engineering reviewed data from all of the pole attachment applications Alabama Power processed during 2017 and 2018. These applications collectively included 4,303 Alabama Power poles to which AT&T was attached. On those 4,303 poles, the average height of AT&T's highest attachment was feet at the pole. The average mid-span clearance of AT&T's lowest attachment was feet. Because no one is allowed to attach beneath AT&T and because it would be difficult for anyone to meet mid-span clearance

requirements beneath AT&T, this means that, on average, AT&T is occupying [REDACTED] feet of space on Alabama Power's poles.

8. Attached to my declaration as Exhibit C-1 is a diagram that depicts the averages set forth above. Even though the diagram shows AT&T as having two attachments, that is not always the case. Sometimes they have more; sometime they have only one. But even when AT&T has only one attachment, it can often occupy significantly more space than a tensioned CATV or CLEC messenger because of the heavier and thicker bundles that are common on AT&T's lines.

9. The [REDACTED] feet of space occupied by AT&T referenced above does not include any portion of the "safety space" (also known as the "communication worker safety zone"). This space is typically 40" (3.33 feet) on a joint use pole. It is space Alabama Power does not need for its own operations and it is space that Alabama Power would not have built into its electric distribution system but for communications attachers (the first of which in any areas was almost always the ILEC, formerly known as just the "joint use telephone company").

10. On many joint use poles, AT&T is the only communications attacher. Based on our mapping data [REDACTED] of Alabama Power's poles have some sort of attachment by another entity. On those poles, there are a total of [REDACTED] attachments. This means that, on average, each pole with at least one attachment by another entity has [REDACTED] attachments. When Alabama Power is added to this figure, it yields an average number of attaching entities of [REDACTED]. This figure is probably overstated because it assumes that each foreign-owned attachment is owned by a separate entity, which we know is not the case. AT&T, for example, has multiple attachments on numerous poles. Though this [REDACTED] average is an average based on Alabama Power's entire service area (and would not necessarily be appropriate for application to a CLEC that operates only in a specific part of our service area), this average would be appropriate to apply to an entity like AT&T

that has attachments throughout our service area and in virtually all parts of our service area.

Alabama Power's Pole Height Data

11. The average height of an Alabama Power-owned joint use pole is [REDACTED] feet. This average is based on the same data set Pike Engineering reviewed for purposes of ascertaining the height of AT&T's attachments. We also know from property accounting records that the average height of a distribution pole in our system is [REDACTED] feet. Using this information, as well as the information from our mapping system regarding the number of poles with foreign-owned attachments and the number of poles with only Alabama Power attached, we were able to determine that the average height of a pole to which only Alabama Power is attached is [REDACTED] foot. This demonstrates that where we are only setting poles to meet our own service needs, we are setting poles well under 40 foot in length.

AT&T's Cost Savings Under the Joint Use Agreement

12. AT&T does not pay for "make-ready" costs in the same way that Alabama Power's CATV and CLEC licensees pay for make-ready. There are two major differences. First, AT&T does not pay for Alabama Power to rearrange its facilities if necessary to accommodate AT&T. This is a cost Alabama Power absorbs under the joint use agreement. Second, when a pole needs to be replaced, AT&T pays the scheduled cost listed in Appendix A of the joint use agreement, which has not been modified since 2010. CATV and CLEC licensees, on the other hand, pay Alabama Power's current work order cost, which is much closer to the actual cost of the work. Work order costs are based on then-current labor and materials for a particular job in a particular location. By way of example, if Alabama Power replaced an existing 40-foot joint use pole with a 45-foot pole at AT&T's request, AT&T would pay between [REDACTED] under Appendix A, depending on the age of the existing pole, but regardless of whether the pole was accessible,

inaccessible, single phase or three phase. By comparison, a CATV or CLEC licensee would pay between [REDACTED] and [REDACTED] for the work, based on figures from our work order system, depending on whether the pole is accessible, inaccessible, single phase or three phase. The likely average would be at the higher end of that range because between 2011 and 2018, the actual average pole replacement cost paid by our CATV and CLEC licensees was [REDACTED] /pole. This amount excludes the additional costs the CATV and CLEC licensees paid in association with the application process. These are just the work order construction costs.

13. To put this in perspective, during the years 2014-18, AT&T paid (or owes) Alabama Power a total of [REDACTED] for modification costs (which is the closest proxy to “make-ready” costs under the joint use agreement). During this same period a CATV or CLEC licensee would have paid [REDACTED] for the same work (a roughly [REDACTED] ratio). There are two reasons for this cost difference. First, as set forth above, AT&T pays less for pole replacements under Appendix A than CATVs and CLECs pay under the pole license agreements. Second, and also as referenced above, there are significant costs AT&T is not charged at all (including but not limited to rearrangement costs, which can be significant, as well as permitting and inspection costs). Further, under Appendix A, when Alabama Power replaces a pole for AT&T of the same height as the existing pole (for example, if a stronger class of pole is needed to accommodate AT&T), AT&T does not pay for the new pole. The only cost AT&T incurs in this scenario is the remaining value of the existing pole, removal cost, and salvage.

14. In addition to the modification work described above, and because AT&T does not maintain crews qualified to replace poles in energized lines, Alabama Power also replaces AT&T’s defective (rotten, broken, etc.) joint use poles at the same prices set forth in Appendix A. Between 2011 and 2018, we replaced 6,963 defective poles for AT&T at a total cost per Appendix A of

(an average of [REDACTED] 'pole). If Alabama Power performed the same type of work for CATV and CLEC licensees, the total cost would have been approximately [REDACTED] (using the average replacement cost per pole figure of [REDACTED] 'pole set forth above). The cost savings described in the preceding sentence does not even factor in the money that AT&T saves by not having to employ crews that are qualified to work in energized lines.

Current Joint Use Network

15. Alabama Power has approximately 608,000 non-ILEC attachments on its poles. Of these approximately 608,000 attachments, approximately 574,000 of these are CATV attachments (as opposed to CLEC or other attachments). There are many poles in our system where AT&T is the only communications attacher.

16. The jointly used network currently consists of approximately 809,000 poles. Alabama Power owns approximately 630,000 of those poles (78%) and that AT&T owns approximately 179,000 of those poles. The number is "approximate" because the parties have not conducted a joint audit since 2003. The current approximation of poles is based on a projection methodology proposed by AT&T in September 2005, shortly after the last joint audit between the parties. Since at least 2008, Alabama Power has been requesting that AT&T participate in a joint audit so the parties can determine (1) the actual number of jointly used poles, and (2) the actual relative ownership between the parties. AT&T has thus far refused to do so. If Alabama Power had bargaining leverage over AT&T, it seems like we would have been able to accomplish something as mundane as a joint audit at some point in the past 10+ years.

17. I do not understand why AT&T claims that the current joint use network cost sharing arrangement is the result of unequal bargaining power. Since I have worked in joint use at Alabama Power, we have never attempted to change the cost-sharing provisions in Appendix B.

The per pole rates that each party pays under the joint use agreement are merely updated annually based on each party's current cost data. Further, the methodology by which we calculate the number of joint use poles owned by each party for billing purposes was a methodology proposed by AT&T in September 2005, shortly after the last joint audit between the parties. Also, prior to March 7, 2018, I am not aware of any instance on which AT&T has alleged or even suggested that there was anything unfair or unreasonable about our cost sharing arrangement.

Operating Relationship with AT&T

18. When we do modification work for AT&T under the joint use agreement, such as replacement of defective poles or installation of taller poles to meet AT&T's needs, we send a billing authorization request to AT&T before actually sending the invoice. This gives AT&T the opportunity to review the request and make sure that it meets their expectations so that once we invoice for the work, there are no disputes about the accuracy of the invoice. Though this process is not technically required by the joint use agreement, it is one of the operating routines the parties have developed under Article XX of the joint use agreement and utilized for many years. Since I have been involved in joint use, AT&T consistently delays in an unreasonable manner when approving these billing authorization requests. In April this year, we had [REDACTED] in yet-to-be-invoiced modification work for AT&T, some of which was more than 21 months old, simply because AT&T would not respond to the billing authorization requests.

19. AT&T alleges in its complaint that it performs surveys and inspections on its own, similar to what CATV and CLEC licensees are required to do under Alabama Power's pole license agreements. In all of my years with Alabama Power, many of which were spent in the field, I have never seen AT&T performing a survey or inspection of any sort. The only thing I ever see AT&T doing in the field is construction or repair of their lines.

20. AT&T also suggest in its complaint that Alabama Power chooses pole height for its system without regard to AT&T. This is not true. When we are building a new pole line within AT&T's ILEC territory, our standard practice is to ask them in writing whether they want the pole line to be a joint use line. If they decline (which they have on occasion), we build the line with smaller poles.

21. AT&T also says in its complaint that occupying the lowest portion of the usable space on Alabama Power's poles is not advantageous to them. However, AT&T has never, in response to a make-ready directive asking them to lower their attachment(s), suggested that they should raise their attachment(s) to make room for a new attachment beneath their lines.

Discussions with AT&T

22. I participated in both the June 1, 2018 and February 22, 2019 meetings with AT&T. With the exception of one prior conversation with Kyle Hitchcock, none of the AT&T participants in those meetings were people I had ever previously met, heard of or interacted with in my role as Joint Use Team Leader or previously as Distribution Engineer. During those meetings, AT&T did not want to discuss any part of the joint use agreement other than the "rate." AT&T also took the position that the "rate" had nothing to do with the remainder of the agreement. It was almost as if the AT&T participants in the meetings either (a) had no knowledge of the operational relationship between the parties, or (b) did not care at all about the operating relationship between the parties. For example, when we raised the billing authorization request issue referenced above, AT&T's representatives acted as if they had never even heard of the operating routine (which has been in place for many years).

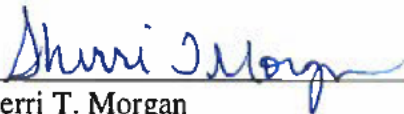
23. The template CLEC pole license agreement that we provided to AT&T on June 15, 2018 was representative of our other CLEC pole license agreements. The redacted versions of the

two agreements we provided to AT&T on July 19, 2018 (one CLEC agreement and one CATV agreement) were also representative of our CATV and CLEC pole license agreements. The agreements were not “cherry picked” as alleged in AT&T’s complaint. AT&T refused to provide any data or exemplar agreements to us. AT&T’s inability (or refusal) to discuss anything other than the rate made it impossible to have constructive discussions with AT&T. This was further complicated by the fact that AT&T did not want to be treated like a CATV or CLEC licensee, but still demanded the one-foot rate paid by CATV and CLEC licensees.

24. I have been a part of several negotiations with ILEC joint use partners and the level of cognitive dissonance from AT&T was the worst I have ever experienced. AT&T’s representatives in these two meeting either (a) knew little or nothing about the relationship between the parties, or (b) were not there to negotiate in good faith. This was particularly true in the February 22, 2019 meeting. AT&T spent the vast majority of that meeting asking detailed accounting questions about Alabama Power’s CATV and CLEC rates. My impression was that AT&T did not come to negotiate or discuss the relationship, but instead came to finalize information in preparation for their complaint. The fact that AT&T served its complaint while we were waiting on a response from them confirmed that impression.

25. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 20th day of June, 2019.



Sherri T. Morgan
Joint Use Team Leader
Alabama Power Company

EXHIBIT C-1

Confidential

ENTIRE EXHIBIT DESIGNATED CONFIDENTIAL

EXHIBIT D



**AT&T Alabama v. Alabama Power Company
Pole Attachment Complaint**

**Affidavit Of
Kenneth P. Metcalfe
The Kenrich Group LLC
1919 M Street, NW
Suite 620
Washington, DC 20036**

June 20, 2019

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I. Introduction

I, Kenneth P. Metcalfe, being sworn, depose and say:

1. I was retained by Langley & Bromberg LLC to determine whether AT&T's Joint Use Agreement ("JUA") with Alabama Power provides AT&T any unique advantages as compared to Alabama Power's pole license agreements with Cable Television Companies ("CATVs") and Competitive Local Exchange Carriers ("CLECs"), and if so, to assess and/or value selected advantages; and to evaluate whether the cost sharing arrangements with AT&T under the JUA were just and reasonable, given those advantages.

2. I am Co-Chief Executive Officer of The Kenrich Group LLC ("Kenrich"), a Certified Public Accountant and a Certified Valuation Analyst. For nearly 37 years, I have provided consulting expertise in the areas of accounting, finance, business management, financial decision making, economic causation, and economic damages analyses. My experience includes matters both in dispute and not in dispute, and encompasses analyzing, documenting, teaching, and testifying on the proper methods to determine economic damages, as well as evaluating economic analyses and results. I have consulted for and provided expert consulting and/or expert witness testimony on behalf of numerous entities, such as utilities, in various matters, including the proper measurement of economic damages, cost quantification, prudence reviews, regulatory requirements and accounting, alternative vendor and project selection, and decommissioning support. I have provided testimony in numerous U.S. federal and state courts, in U.S and international arbitration, and to state public utility commissions. See Appendix 1 for my resume.

3. Kenrich is a national consulting firm of accounting, financial, economic, and engineering professionals with significant experience and expertise with the public utility industry, government contracting, construction, intellectual property, and other matters. Kenrich has over 90 consultants in offices in Washington, D.C., Austin, Chicago, Dallas, Houston, Las Vegas, Los Angeles, Minneapolis, New York, Phoenix, and Raleigh-Durham.

4. My opinions are based on an independent professional examination, including my review of documents provided by Alabama Power, as well as discussions with Ms. Sherri

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Morgan, Joint Use Team Leader at Alabama Power; Ms. Pam Boyd, Power Delivery Technical Services General Manager at Alabama Power; Mr. Wes Conwell, Senior Regulatory Specialist at Alabama Power; and Mr. Shane Powell, Distribution Manager at Alabama Power. The opinions contained in this Affidavit have been prepared on the basis of the information and assumptions set forth in this Affidavit. My opinions are based on the information provided and reviewed and are subject to change if new information becomes available. I reserve the right to supplement and amend my opinions based on additional evidence provided in this matter.

II. Alabama Power And AT&T Joint Use Agreement, And Historical Context

5. The term “joint use” refers to the shared use of the poles owned by electric utilities (“utilities”) and telephone companies. The telephone companies, now referred to as incumbent local exchange carriers (“ILECs”), and utilities began sharing poles in the early 1900s to minimize overall costs (i.e., using one pole instead of two to support both the ILEC’s and the utility’s overhead facilities).

6. JUAs first came into existence in the early 20th century and continue today to govern the terms for pole ownership and cost sharing arrangements between utilities and ILECs. The overall approach was such that utilities and ILECs would each own “joint use” poles in approximately the same proportion as their respective space requirements on a single pole. That way, assuming pole ownership “parity” was maintained, no significant exchange of net annual payments would be necessary between the parties. In fact, I understand that AT&T and Alabama Power envisioned that parity would exist under the JUA.¹

7. Alabama Power and AT&T most recently entered into a JUA in June 1978.² I understand that the parties last amended the cost sharing provisions of that agreement in or

¹ See “Alabama Power Company And South Central Bell Telephone Company Joint Use Agreement,” dated June 1, 1978 (“JUA”) at ATT00105, “the parties shall take into consideration the desirability of having the new poles owned by the party owning the lesser number of joint use poles so as to progress toward a division of ownership of poles *so that neither party shall be required to pay annual rental payments.*” [emphasis added]

² See JUA at ATT00103.

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around 1994.³ The JUA cost sharing formula (as described in Appendix B to the JUA) allocates $\frac{1}{4}$ % and $\frac{1}{4}$ % of pole ownership costs to Alabama Power and AT&T, respectively.⁴ The cost sharing formula is based on the amount of “usable” space reserved for each party on a typical 40-foot JUA pole (i.e., $\frac{1}{4}$ feet for AT&T and $\frac{1}{4}$ feet for Alabama Power) and an equal sharing of the “unusable” space by both parties.⁵

8. I understand AT&T is now taking a position that the rates it pays to Alabama Power under the JUA are not just and reasonable. Further, AT&T believes it should be entitled to pay the same pole attachment rates that CLECs and CATVs are permitted to pay under Federal Communications Commission (“FCC”) regulations.⁶

III. Foundational Considerations

A. AT&T Appears To Ignore A Fundamental Difference Between The ILECs And The CLECs And CATVs (i.e., Those With Mandatory Access)

9. I understand that FCC regulations require a utility to “provide a cable television system or any *telecommunications carrier* with nondiscriminatory access to any pole” that the utility owns.⁷ [emphasis added] I further understand that the FCC explicitly excludes ILECs from the definition of “telecommunications carrier,” specifically indicating that the term “does not include any incumbent local exchange carrier.”⁸ In other words, Alabama Power is required by the FCC to provide mandatory access to CLECs and CATVs, but is not required to provide mandatory access to AT&T, which is an ILEC. This represents a fundamental difference between CLECs or CATVs as compared to ILECs. Without a

³ See JUA, Appendix B at ATT00116.

⁴ See JUA, Appendix B at ATT00119.

⁵ Per Appendix B to the JUA, Alabama Power’s allocated space is $\frac{1}{4}$ feet of usable space plus 50% of 29.5 feet of unusable space on a typical 40-foot pole (i.e., $\frac{1}{4}$ feet + ($\frac{1}{2}$ x 29.5 feet)) / 40 feet = $\frac{1}{4}$ %).

⁶ See Complaint dated April 22, 2019 p. 1.

⁷ See 47 U.S.C. § 224(f)(1).

⁸ See 47 U.S.C. § 224(a)(5).

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contractual obligation for a utility to provide access, such as the terms in the JUA, ILECs are at a material disadvantage compared to CLECs and CATVs.⁹

10. I further understand that, as part of negotiating the cost sharing provisions and other terms under the JUA, Alabama Power and AT&T agreed to incorporate a provision precluding, in perpetuity, either party from removing from its own poles any existing attachments belonging to the other party (i.e., even if the JUA itself was terminated). This provision states that at any time, either party can terminate the JUA with respect to the right to attach to *additional* joint use poles, but neither party can “terminate the right of either party to attach to *existing* joint use poles or to maintain *existing* attachments, and all such attachments shall continue thereafter to be maintained, pursuant to and in accordance with the terms of this Agreement.”¹⁰ [emphasis added] In other words, both parties to the JUA effectively have “mandatory access” to each other’s poles, in perpetuity (at least on all of those joint use poles to which both have already attached prior to any termination). This perpetual license provision provides a very significant benefit to AT&T by effectively providing mandatory access to Alabama Power’s poles by contract, which access I understand it lacks by law. As a result of this perpetual license provision in the JUA, AT&T can avoid the costs it would otherwise incur to build out its own system of poles in areas where Alabama Power currently owns poles to which AT&T is attached.

B. AT&T Appears To Now Take A Position That One Of The Most Significant Benefits Arising From The JUA Is Now Irrelevant

11. I understand that, as an electric utility regulated by the Alabama Public Service Commission, Alabama Power has a responsibility to incur costs prudently. Accordingly, absent the JUA, Alabama Power would have installed poles only tall enough to accommodate

⁹ Similarly, I understand that Alabama Power would not have mandatory access rights to AT&T’s poles absent the JUA.

¹⁰ See JUA, Article XV at ATT00108.

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Alabama Power's own attachments.¹¹ Had AT&T later requested access to Alabama Power's poles, AT&T would have had to cover the cost of replacing Alabama Power's existing poles with taller poles that would then be capable of accommodating AT&T's attachments. Of course, this pole replacement cost would far exceed the shared cost of installing taller poles in the first place, which points to the main economic purpose of the JUA; i.e., to minimize total costs.

IV. Quantification Of Selected ILEC Benefits

A. Introduction To Analyses

12. I understand that, per the FCC's rule, Alabama Power must provide "clear and convincing evidence that the incumbent local exchange carrier receives benefits under its pole attachment agreement with a utility that materially advantages the incumbent local exchange carrier over other telecommunications carriers or cable television systems providing telecommunications services on the same poles."¹² First, as discussed above, two benefits received by AT&T include the perpetual license provision, as well as AT&T's avoided costs to replace Alabama Power's poles with taller poles to accommodate AT&T's attachments. I also identify certain additional "operational" benefits to AT&T that arise from the JUA, which are not available to CLECs and CATVs under their respective license agreements with Alabama Power.

13. In the analyses described below, I quantify certain benefits to AT&T (as well as the reciprocal benefits to Alabama Power). I also calculate the "net benefit" received by AT&T, which is equal to the benefit to AT&T, less the reciprocal benefit to Alabama Power.

¹¹ See letter from Alabama Power to AT&T dated July 19, 2018 at ATT00260, "Without the JUA, Alabama Power would have built a network of poles sufficient only to meet its own service needs. In fact, it would have been imprudent for Alabama Power to invest in taller/stronger infrastructure than necessary for its own service needs without the JUA."

¹² See 47 CFR § 1.1413.

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B. The Use Of Cost Annualization Rates

14. My analyses include the quantification of AT&T benefits that are one-time in nature (e.g., avoided make-ready costs¹³), as well as AT&T benefits that recur from year-to-year (e.g., AT&T's benefits from the use of more than feet of space). As part of my analyses, I also convert one-time benefits into an annualized rate per pole. By quantifying the benefits in terms of an annualized rate per pole, one-time benefits can be compared to annual, per pole rates, such as the JUA rates and the FCC's telecom and cable rates.

15. When calculating Alabama Power's annualized benefits, I use Alabama Power's cost of capital as an annualization rate.¹⁴ The cost of capital is the rate of return required to commit capital to an investment.¹⁵ For example, Alabama Power's cost of capital for 2018 is %.¹⁶ It follows that if Alabama Power were to receive a one-time benefit of \$100 in 2018,

¹³ I use the term "make-ready" to refer to any pole modifications required to attach to a pole, such as pole replacement or rearranging existing attachments on a pole. Throughout this affidavit, I may also refer make-ready costs as pole modification costs.

¹⁴ Cost of capital is sometimes referred to as Return on Investment or ROI in the documents I reviewed in this case. Alabama Power's cost of capital and AT&T's cost of capital are both identified in Appendix B to the JUA and are used as inputs in the JUA cost sharing methodology. Further, Alabama Power's derivation of its cost of capital for 2010 through 2018 are shown in Exhibit 3 of Alabama Power's interrogatory responses, dated May 22, 2019 at APC000022-5.

¹⁵ See Litigation Services Handbook, 5th edition, at 9.2. "The cost of capital is the rate of return required by investors (both bondholders and equity holders) for them to supply capital. One can view it as an opportunity cost because the rate must equal or exceed what the investor could obtain from a similar investment of comparable risk."

¹⁶ See Exhibit 3 of Alabama Power's interrogatory responses, dated May 22, 2019 at APC000022-5.

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that benefit can be expressed as an annual amount. A \$100 one-time benefit is equivalent to an annualized benefit of per year in perpetuity.¹⁷

16. Mr. Daniel Rhinehart's affidavit included AT&T's "cost of capital" from 2011 through 2017, which ranged from 10.9% to 11.3%.¹⁸ This is significantly higher than Alabama Power's cost of capital, which ranged from % to % over the same time period.¹⁹ The use of a higher cost of capital as an annualization rate will result in a higher annualized benefit. Therefore, as a conservatism for the purposes of my analyses, I have used Alabama Power's lower cost of capital when calculating AT&T's annualized benefits.

C. Benefit Of The Bargain

17. As noted above, the JUA contains a perpetual license provision that provides significant benefits to AT&T, as it guarantees AT&T can maintain access to Alabama Power's poles even after a termination of the JUA. In contrast, CLEC and CATV license agreements state that upon termination by either party, that a CLEC or CATV must remove its attachments from Alabama's Poles within 90 days of termination.²⁰ AT&T therefore receives a unique and fundamental benefit as a result of the JUA, which I conservatively

¹⁷ See *The Cost of Capital*, by Eva Porras, at p. 131, describing the use of the cost of capital as a hurdle rate. "The 'hurdle rate' is the minimum acceptable rate of return from an investment project. For projects of average risk, it is usually equal to the firm's cost of capital."

This concept is analogous to a perpetuity, which is a type of annuity in which fixed annual amounts are received by the annuity-holder every year in perpetuity. The present value of a perpetuity is equal to the fixed annual amount divided by the interest rate. Using our earlier example with an interest rate of %, the present value of receiving \$ every year in perpetuity is equal to \$100 (i.e., \$ / % = \$100). See *Financial Management: Theory & Practice*, 12th edition, at 2.11.

Another example of this concept relates to formulas used as part of business valuations. Specifically, the value of a business is sometimes calculated as the annual free cash flows divided by the firm's cost of capital. If the firm's cost of capital is % and annual cash flows are expected to be fixed at , this formula calculates the value of the company at \$1 million (i.e., / % = \$1 million). See *Litigation Services Handbook*, 5th edition, at 10.12 – 10.13. See also *Measuring Commercial Damages* at pp. 230 – 231.

¹⁸ See Rhinehart affidavit, Exhibit R-4 at ATT00039. Mr. Rhinehart indicated he used the FCC default cost of capital.

¹⁹ Alabama Power's cost of capital for the years 2010 through 2018 is included in Exhibit 3 of Alabama Power's interrogatory responses, dated May 22, 2019 at APC000022-5.

²⁰ See example CLEC license agreement at ATT00142.

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quantify below. I have quantified two alternative scenarios of costs that AT&T avoids due to this provision: (1) Avoided Contingency Costs and (2) Avoided System Replacement Costs.

i. Avoided Contingency Costs

18. If the perpetual license provision of the JUA did not exist, AT&T would have to remove its attachments from Alabama Power's poles in the event of termination by either party. As a result of the risk of that termination, but for the JUA, AT&T would need to incur costs to be "ready" to build-out, if necessary, its own network of poles (or pursue some alternative means for providing service). For example, the CLEC and CATV license agreements specify that the CLEC's and CATV's attachments must be removed from Alabama Power's poles 90 days following a termination.²¹ If AT&T had the same termination provision as CLECs and CATVs, then AT&T would need to be prepared to install its network of poles within 90 days.

19. I understand from Ms. Boyd and Mr. Powell that if the perpetual license provision did not exist in the JUA, Alabama Power would need to procure and hold in inventory the number of joint use poles currently owned by AT&T. This would include purchasing land and equipment necessary to store the poles in inventory. Assuming AT&T would need to take a similar step, AT&T would need to build an inventory of more than 3.5 times more poles than Alabama Power.²² The manufacturing capacity of a pole supplier further supports the necessity of holding poles in inventory. I understand Alabama Power's largest pole supplier can produce only approximately 500 poles per week, and it therefore would be impossible to manufacture 630,143 poles within a 90-day period.²³ Without the perpetual license provision of the JUA, AT&T would be required to hold 630,143 poles in inventory,

²¹ See example CLEC license agreement at ATT00142.

²² 630,143 poles / 179,021 poles = 3.52.

²³ Per discussions with Mr. Powell.

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which is estimated to cost \$ per year, or \$ per pole per year, based on the inputs provided by Mr. Powell.^{24,25}

20. After accounting for the reciprocal benefit of the perpetual license that Alabama Power receives from AT&T for the poles AT&T owns, AT&T's annualized net benefit is \$, or \$ per pole.²⁶ My quantification of the net benefit to AT&T credits AT&T's benefit with the cost Alabama Power would incur to hold 179,021 poles in inventory.

21. In addition to holding poles in inventory, I understand from Alabama Power personnel that a contractor would need to be on stand-by and ready to install the replacement poles within a 90-day period. However, given the short time period and the large quantity of Alabama Power owned poles used by AT&T, it is economically infeasible to replace its network within 90 days. For example, per Mr. Powell, one crew can replace 4.5 poles per week on average, and it would require AT&T to employ over 10,000 crews to complete the replacement within 90 days, which is impractical.^{27, 28} As a conservatism, I have not included any standby costs in the quantification of avoided contingency costs. Further, there may be additional risk to AT&T resulting from it being unable to continue providing service to its customers that I have, conservatively, not accounted for in this analysis. This analysis represents only a portion of the value associated with the perpetual license provision and does not account for AT&T's costs to maintain its facilities. The calculation of a more comprehensive value of the perpetual license provision is described below.

²⁴ See Exhibit D-2.

²⁵ Based on U.S. Energy Information Administration, "Power Outages Often Spur Questions Around Burying Power Lines," dated July 25, 2012, I understand that a potentially alternative underground system would be more expensive than above-ground pole network.

²⁶ See Exhibit D-2.

²⁷ Further, Dr. Dippon, AT&T's damages expert, states in his affidavit that the "[d]uplication of Alabama Power's pole network by AT&T or any other party is neither economically feasible nor socially desirable." See Dippon Affidavit ¶ 18 at ATT00076.

²⁸ One crew is composed of six people, on average.

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ii. Avoided System Replacement Costs

22. In addition to estimating the contingency costs associated with being ready to replace its telecommunications network (in a hypothetical JUA termination which required the removal of AT&T's attachments 90 days from Alabama Power's poles following such termination — i.e., without the perpetual license provision of the JUA), I have also calculated the costs AT&T would incur to actually replace the network AT&T currently has in place on the joint use poles owned by Alabama Power.²⁹

23. Ms. Morgan provided me with the estimated costs for AT&T and Alabama Power to procure and install poles.³⁰ I assumed AT&T would install a 30-foot pole to build out its own network, rather than the 40-foot standard pole per the JUA that accommodates both AT&T and Alabama Power. Under these assumptions, the estimated annualized cost to AT&T is \$ _____ to purchase and install 630,143 poles (i.e., the number of joint use poles owned by Alabama Power to which AT&T is attached to as of November 2018), or \$ _____ per pole.^{31, 32} After accounting for the reciprocal benefits to Alabama Power, the annualized net benefit to AT&T is \$ _____, or \$ _____ per pole.³³

24. Again, this is a significant and fundamental contractual benefit to AT&T associated with the JUA. In contrast, CLEC and CATV license agreements do not provide such a benefit. As the pole owner and licensor, Alabama Power is not precluded from terminating an agreement with a CLEC or CATV and subsequently requiring the CLEC or CATV to remove their attachments from Alabama Power's poles.³⁴

²⁹ As a conservatism, I do not include the costs to store poles in this analysis.

³⁰ I understand that Ms. Morgan used Alabama Power's Job Estimating & Tracking System ("JETS") when preparing these estimates.

³¹ See Exhibit D-3.

³² The annualized estimated cost is derived from the one-time cost to replace AT&T's pole network plus applicable carrying charges. The cost estimate includes labor, material, and equipment costs to install new poles and transfer AT&T's equipment and wires from the Alabama Power-owned pole to the newly installed pole.

³³ See Exhibit D-3.

³⁴ See example CLEC license agreement at ATT00142.

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D. Accounting For Other Selected Costs Paid By CLECs And CATVs, But Not Paid By AT&T

i. Avoided Inspection, Permitting, And Make-Ready, Costs

25. Per the terms of the JUA, I understand that AT&T is not required to and does not pay inspection or permitting costs when attaching to a JUA pole. Further, AT&T does not pay make-ready costs (i.e., any necessary pole modification work to accommodate an attachment) associated with its use of the feet of space that is reserved for AT&T under the JUA.³⁵ In contrast, CLECs and CATVs do pay permitting and inspection costs for all their pole attachments, as well as pole modification costs when necessary.³⁶

26. As mentioned above, when CLECs and CATVs seek to attach to JUA poles, I understand that they must pay fees to the pole owner to cover inspection and permitting costs. Inspections are performed before installing attachments (i.e., “pre-inspections”) to determine whether there is sufficient available pole space, if any of the existing attachments will need to be moved or modified, or if the existing pole needs to be replaced with a taller or stronger pole to accommodate the new attachment.³⁷ I further understand that CLECs and CATVs also pay for a second inspection performed by the pole owner following the installation of any CLEC’s or CATV’s new attachments (“post-inspections”). The purpose of the second inspection is to confirm the newly installed attachment actually conforms with the necessary requirements.³⁸

27. Per Ms. Morgan, in 2018, Alabama Power charged \$ per pole to CLECs and CATVs for these two inspections. As an ILEC, AT&T did not pay these same inspection fees on the 630,143 joint use poles owned by Alabama Power, and therefore avoided paying

³⁵ Per discussions with Ms. Morgan.

³⁶ See example CLEC license agreement, Exhibit B at ATT00151.

³⁷ Per discussions with Ms. Morgan. See also example CLEC license agreement, Section 3c at ATT00126-7.

³⁸ Per discussions with Ms. Morgan. See also example CLEC license agreement at ATT00125.

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\$ in inspection costs per year, or \$ per pole per year.³⁹ After accounting for reciprocal benefits to Alabama Power, AT&T's annualized net benefit is \$, or \$ per pole.⁴⁰

28. In addition to pre- and post-inspections, I understand from Ms. Morgan that Alabama Power charges an application fee to CLECs and CATVs to cover Alabama Power's administrative costs associated with the inspections and make-ready modifications. These fees range from \$ to \$ per application, and I understand that a single application covers an average of 12 poles.⁴¹ In accordance with the JUA, I understand that AT&T is also not assessed application fees and has thus avoided an additional \$ per year, or \$ per pole.⁴² After accounting for reciprocal benefits to Alabama Power, AT&T's annualized net benefit is \$, or \$ per pole.⁴³

29. In addition to the above inspection and application fees which apply to each new pole attachment, I understand from Ms. Morgan that CLECs and CATVs pay additional fees in specific situations (again which do not apply to AT&T under the JUA); e.g., (1) a "rush" fee for pre-inspections requested to be completed within a one week period; (2) a "ride-by inspection" fee when a CLEC or CATV fails to provide certain requested information; and (3) a "communication directive" fee when a CLEC or CATV installs an attachment improperly or another adjacent attachment must be relocated on account of the new CLEC or CATV attachment. As an additional conservatism, I have not included these costs for the purposes of my analysis.

30. Another fee (i.e., in addition to the above-identified fees) CLECs and CATVs pay is for non-replacement physical modifications of a pole (e.g., the relocation of existing pole attachments) or even the entire replacement of an existing pole, which are often required to

³⁹ See Exhibit D-4.3.

⁴⁰ See Exhibit D-4.3.

⁴¹ Per discussions with Ms. Morgan.

⁴² See Exhibit D-4.2.

⁴³ See Exhibit D-4.2.

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allow for the CLEC or CATV attachment.⁴⁴ Per their respective license agreements, I understand that CLECs and CATVs are responsible for the cost of any modifications performed by Alabama Power.⁴⁵

31. In contrast to CLECs and CATVs, I understand that under the JUA, Alabama Power is required to reserve feet of pole space for AT&T's *exclusive* use.⁴⁶ Further, the JUA permits AT&T to use more than feet of space, without additional charge, if that space is available.⁴⁷ Therefore, only in unusual circumstances (e.g., when AT&T needs more than feet of space and that additional space on an existing JUA pole is not available) does AT&T pay any costs to Alabama Power to modify joint use poles. But for the existence of the JUA and the reserved pole space provided for AT&T therein, AT&T would have been required to pay for pole replacement costs for virtually every JUA pole currently owned by Alabama Power.⁴⁸ Per Sherri Morgan, between 2014 and 2018, Alabama Power has paid on average approximately \$ per pole to replace its own poles throughout its pole network, which I understand would be similar to or conservatively less than the costs that AT&T would pay Alabama Power for a 40-foot pole replacement.⁴⁹ The annualized avoided pole replacement costs by AT&T due to the JUA totals \$, or \$ per pole.⁵⁰

⁴⁴ Per discussions with Ms. Morgan.

⁴⁵ See example CLEC license agreement, Exhibit B at ATT00151. See also example CLEC license agreement, Section 5 at ATT00127-8.

⁴⁶ See JUA at ATT00105.

⁴⁷ See JUA at ATT00106. "So long as the provisions of the Code are met, unallocated space may, without additional charge, be used by the Power Company and Telephone Company."

⁴⁸ Per discussions with Ms. Boyd.

⁴⁹ The average pole height in Alabama Power's pole network (i.e., both JUA and non-JUA poles) is approximately 38 feet. (See Alabama Power's interrogatory responses, dated May 22, 2019, p. 9.) I also understand that the amount is a conservatively low estimate for the amount that is billed to CLECs and CATVs related to pole replacement, because it does not include costs for some activities. Therefore, Alabama Power's average cost to replace its network of poles would be similar to or conservatively less than the cost for Alabama Power to replace an existing pole with a 40-foot pole for AT&T's use.

⁵⁰ See Exhibit D-4.1.

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After accounting for reciprocal benefits to Alabama Power, AT&T's annualized net benefit is \$ _____, or \$ _____ per pole.^{51,52}

ii. The JUA Effectively Provides For Discounted Pole Modification Costs

32. As mentioned above, AT&T pays make-ready costs when AT&T needs more than the _____ feet of space of reserved space and when that additional space on an existing JUA pole is not available.⁵³ Even though AT&T on average uses more than its allocated space on JUA poles, I understand AT&T is seldom required to pay make-ready costs. Per Ms. Morgan, from 2011 through 2018, AT&T paid make-ready costs for only 584 poles out of the 630,143 JUA poles owned by Alabama Power. The costs that AT&T pays for make-ready are summarized in Appendix A to the JUA. I understand from Ms. Morgan that the costs shown in Appendix A are significantly lower than the costs routinely paid by CLECs and CATVs for the same or similar work. CLECs and CATVs pay Alabama Power for work based on estimates that are developed contemporaneously with performance of that work, while the charges in Appendix A are based on dated estimates, and significantly understate the costs Alabama Power actually incurs.⁵⁴

⁵¹ See Exhibit D-4.1.

⁵² As a conservatism and for purposes of my analysis, I have not quantified the net benefit to AT&T of avoided make-ready costs associated with non-replacement modifications, such as rearranging attachments on a pole.

⁵³ See JUA, Appendix A at ATT00110-5.

⁵⁴ Mr. Mark Peters apparently does not recognize that the JUA Appendix A rates are significantly lower than actual costs and states "each approach imposes make-ready costs on the attacher, leaving no material difference that would justify AT&T paying a higher rental rate." See Peters Affidavit ¶ 9 at ATT00065.

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E. Other Selected Benefits

i. Assigning The Value Of The “Safety Space” And Space Actually Occupied To The Licensee

1. Safety Space

33. A minimum of 40 inches of space is required between Alabama Power’s electric facilities and AT&T’s attachments.⁵⁵ On Alabama Power’s joint-use poles, this safety space is required solely due to the presence of AT&T, and on AT&T’s joint-use poles, the safety space is required solely due to the presence of Alabama Power. I understand that under the terms of the JUA, the parties agreed to equally share the costs associated with all unusable space on the pole, including the safety space.⁵⁶ If both parties maintained the relative pole ownership levels consistent with the JUA (i.e., consistent with the space allocation percentages listed in Appendix B), neither party would pay the other party any material net fees, including any amounts associated with safety space.

34. Given the currently much greater level of pole ownership by Alabama Power, and the fact that Alabama Power installed taller poles with safety space solely to accommodate AT&T, the cost sharing arrangement in the JUA does not provide an equitable result. From an economic cost-causation perspective under the current circumstances, it would be more equitable to allocate 100% of the safety space to the licensee. This alternative approach to allocating the cost of the safety space is justified because safety space is different than any other unusable space on a joint use pole (e.g., buried space providing foundational support, space providing required height clearance from obstructions), all of which would need to exist even when there is only a single attacher.

35. Because the cost sharing methodology under the JUA has not changed materially and yet the percentage of joint use poles owned by Alabama Power far exceed that of AT&T, AT&T requires more cumulative space on joint use poles than it pays for. If AT&T paid Alabama Power for 100% of the safety space on Alabama Power-owned poles, AT&T would

⁵⁵ See JUA, Appendix B at ATT00119.

⁵⁶ See JUA, Appendix B at ATT00119.

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owe Alabama Power \$ per year, or \$ per pole for the safety space (i.e., this does not include amounts for the space that AT&T actually requires on Alabama Power's poles, which is discussed in the next section).⁵⁷ After accounting for reciprocal benefits to Alabama Power, AT&T's annualized net benefit is \$, or \$ per pole for the safety space.⁵⁸

36. I use the FCC's new telecom rate to allocate the costs of safety space to each party. Counsel has directed me to apply the new telecom rate in a way that is in parity with the formula used to calculate the cable rate (i.e., so that the rates paid under the new telecom formula are not materially different from the rates that would be paid by CATVs for the use of the same space). I understand that the FCC "sought to bring parity to pole attachment rates calculated using the telecom or cable rate formula so that all attachments rates would be at or near the cable rate formula."⁵⁹ The FCC's new telecom formula does result in a rate that is approximately equal to the cable rate, but only when the attacher is using 1 foot of space (i.e., 7.41% of pole costs for the cable rate, and 7.39% for the new telecom rate). Parity between the cable rate and new telecom rate is lost when the attacher uses even 1 additional foot of usable space, as shown in Exhibit D-7 and in Table 1 below.

⁵⁷ See Exhibit D-5A.

⁵⁸ See Exhibit D-5A.

⁵⁹ See Federal Communications Commission, "Order On Reconsideration", FCC 15-151, dated November 17, 2015 ¶ 2.

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Table 1
Percentage Of Annual Pole Costs Using FCC Cable (CATV) & New Telecom (CLEC)
Formula⁶⁰

	Cable Rate (CATV)	New Telecom Rate (CLEC)
1 Foot Of Space	7.41%	7.39%
2 Feet Of Space	14.82%	9.15%

37. In order to apply the FCC's new telecom rate formula in a way that does not disadvantage a CATV, I use the FCC's new telecom rate for the use of 1 foot of space and multiply it by the amount of space used. For example, if a telecommunications company uses 2 feet of space, I would use a rate equal to 14.78% of annual pole costs (i.e., 7.39% * 2 feet), which is approximately equal to the cable rate of 14.82% for the same space.

38. As mentioned above, safety space is required between Alabama Power and any other attacher, including CLECs and CATVs. However, the FCC's formulas for calculating the rates charged to CLECs and CATVs does not capture any portion of the safety space to the attaching entities or treat it as unusable space.⁶¹ If AT&T was permitted to pay a rate which did not incorporate any costs associated with safety space, Alabama Power would be bearing the entire burden of providing pole space required only because other entities are attaching to its poles.⁶²

2. Space Actually Used By AT&T

39. Per Ms. Morgan, I understand that AT&T uses an average of feet on Alabama Power's JUA poles. This is considerably more than the feet of reserved space

⁶⁰ See Exhibit D-7 for more information.

⁶¹ The FCC has indicated that safety space is usable and is used by the electric utility. See Federal Communications Commission, "Consolidated Partial Order On Reconsideration", FCC-01-170 dated May 22, 2001 ¶ 51.

⁶² It is noteworthy that Mr. Rhinehart appears to allocate safety space to Alabama Power in his calculations on Exhibit R-4. See Rhinehart affidavit, Exhibit R-4 at ATT00039.

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under the JUA. I calculated the value to AT&T for the use of feet of space based on the same rate methodology discussed in the previous section.⁶³ I also calculated the reciprocal benefits to Alabama Power, which conservatively assumes Alabama Power uses feet of space on AT&T's poles.⁶⁴ AT&T's annualized benefit totals approximately \$, or \$ per pole.⁶⁵ After accounting for reciprocal benefits to Alabama Power, AT&T's annualized net benefit is \$, or \$ per pole (i.e., this is in addition to the amounts for safety space calculated in the previous section).⁶⁶

V. Other Unique Benefits ILECs Receive, Not Quantified

A. Benefit Of Incumbent Position

40. AT&T's reserved space on JUA poles is a significant benefit that CLECs and CATVs do not enjoy. For example, consider a geographic area with existing Alabama Power-owned JUA poles without any AT&T, CLEC, or CATV attachments. If AT&T and a CLEC or CATV both decide to service that geographic area, AT&T is able to service that market more quickly compared to CLECs or CATVs for numerous reasons, which include the following identified in Table 2.

⁶³ I understand other entities are not permitted to attach within 1 foot of AT&T's existing attachments. I did not include this additional 1 foot of space in my analysis.

⁶⁴ Per discussions with Ms. Boyd, I understand that of Alabama Power's various pole specifications, most pole specifications indicate that Alabama Power's attachments use less than feet of space.

⁶⁵ See Exhibit D-5B.

⁶⁶ See Exhibit D-5B.

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Table 2
Selected Points Regarding CLEC And CATV Access, As Compared To ILEC Access To
JUA Poles⁶⁷

Description	CLECs and CATVs	ILEC
Permitting	Prior to attaching to Alabama Power’s poles, the CLEC or CATV must: (1) obtain a copy of Alabama Power’s Policies and Procedures; (2) submit an application and a service area map that identifies the location of <u>each</u> pole to which the CLEC or CATV wishes to attach; (3) submit payment of applicable costs; and (4) receive authorization to attach. ⁶⁸	Not required to seek permission or receive approval by Alabama Power to use the space it is allocated under the JUA.
Make-Ready	CLECs and CATVs do not have reserved space on poles. As a result, if there is not adequate space on the pole, the CLEC or CATV must wait (and pay for) Alabama Power’s installation of a replacement pole which can accommodate the CLEC’s or CATV’s attachment. It is also possible that the attaching entities must “make space” on an existing pole by adjusting existing attachments.	AT&T has reserved space on every JUA pole. As a result, it has immediate access to its reserved space on which it can build its facilities.
Alabama Power Inspection	CLECs and CATVs must wait (and pay for) Alabama Power to perform inspections prior to and after the CLEC or CATV installs its attachment.	Alabama Power does not perform pre- or post-inspections for AT&T’s attachments. Accordingly, AT&T has immediate use of its reserved space.

41. The amount of time required to deploy new telecommunications services in a specific market can vary significantly for myriad reasons. However, for reasons including those identified above, it is reasonable to assume that AT&T would require less time to service a market as part of a JUA compared to a CLEC or CATV.

⁶⁷ Per discussions with Ms. Morgan and Ms. Boyd.

⁶⁸ See example CLEC license agreement, Section 3 at ATT00126.

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42. It is a well understood business concept that being “first to market” with a product or service can provide significant economic benefits, all other things being equal. For example, it has been reported that “in most cases, being first to the market provides a significant and sustained market-share advantage over later entrants.”⁶⁹

43. Google Fiber presents an interesting and relevant case example. In February 2010, Google announced that it was planning to build high-speed broadband networks in locations across the United States.⁷⁰ However, by October 2016, it was reported that Google decided to halt its plans to expand to additional cities due in part to competition from “[b]ig incumbents.”⁷¹ Specifically, Google faced challenges competing with “large, established broadband providers who were already there or could benefit from regulations that raised the bar for new entrants.”⁷²

44. In July 2018, Google issued an update related to its Google Fiber service, indicating “[w]hen we started Google Fiber eight years ago, we knew that building a new fiber network was going to be hard, slow and expensive. But what we didn’t fully appreciate were the obstacles we would face around a key part of the process: ***gaining timely access to space on utility and telephone poles*** to place new communications equipment.”⁷³ [emphasis added]

45. Given the expanding role of information technology in the global economy and the substantial financial value that successful businesses in related sectors can create and obtain, it is reasonable to assume that incumbent telecommunications carriers not only participate but aggressively pursue opportunities to leverage the benefits of their incumbency

⁶⁹ See Business+Strategy Magazine article, “Market Entry Strategies: Pioneers Verses Late Arrivals,” dated July 1, 1998.

⁷⁰ See Google article, “Think Big With A Gig: Our Experimental Fiber Network,” dated February 10, 2010.

⁷¹ See Washington Post article, “Why Google Fiber Is No Longer Rolling Out To New Cities,” dated October 26, 2016.

⁷² See Washington Post article, “Why Google Fiber Is No Longer Rolling Out To New Cities,” dated October 26, 2016.

⁷³ See Google article, “FCC Supports OTMR – Faster and Fairer Rules for Pole Attachments,” dated July 13, 2018.

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which are afforded to them under joint use agreements. Currently, I do not have sufficient information to estimate a value to AT&T of this benefit of “incumbency.”

B. More Favorable Liability Sharing Provision

46. I understand that AT&T may enjoy a benefit under the JUA which results from a more favorable liability sharing arrangement, as compared to the indemnification requirements CLECs and CATVs agree to in the standard license agreements.⁷⁴ Currently, I do not have sufficient information to estimate the potential value to AT&T of this reduced liability exposure.

C. Avoided Insurance And Financial Security Costs

47. I also understand that AT&T is not required to obtain certain insurance or provide Alabama Power with financial security (e.g., a bond or letter of credit), whereas CLECs and CATVs are required to do so.⁷⁵ Currently, I do not have sufficient information to estimate the value to AT&T of this potential benefit.

D. Lowest Position On The Pole

48. As part of the JUA, I understand that the parties agreed AT&T would occupy the lowest position on JUA poles.⁷⁶ I understand that there may be significant benefits from being lowest on the pole, including easier access and reduced maintenance costs. I am also familiar with AT&T’s arguments regarding potential disadvantages. Currently, I do not have sufficient information to evaluate the potential of any net benefit to AT&T associated with its pole position.

⁷⁴ See letter from Alabama Power to AT&T dated July 19, 2018 at ATT00260-1. See also JUA, Article XII at ATT00108, and example CLEC license agreement, Section 26 at ATT00137.

⁷⁵ See letter from Alabama Power to AT&T dated July 19, 2018 at ATT00261. See also example CLEC license agreement, Sections 27 and 37 at ATT00138 and ATT00142, respectively.

⁷⁶ See JUA, Appendix B at ATT00119. See also JUA, Article I at ATT00105.

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VI. Response To Selected Points In Dr. Dippon's Affidavit

49. AT&T's complaint included an affidavit by Dr. Christian Dippon, a managing director at NERA Economic Consulting.⁷⁷ He generally opines that the cost sharing rates pursuant to the JUA are not just and reasonable and not competitively neutral, that Alabama Power has abused its position as owner of a large majority of poles, and that the use of the FCC's new telecom rate will ensure competitive neutrality.⁷⁸

50. Dr. Dippon does not provide any substantive analysis supporting his opinions, nor does he appear to have fully thought through certain of his opinions. For example, he appears to argue that AT&T and Alabama Power receive the same economic benefits under the JUA, and therefore AT&T receives "no net benefits."⁷⁹ Surprisingly, he does not acknowledge that Alabama Power's significantly greater pole ownership results in AT&T receiving the great majority of any "reciprocal" benefits.

A. Alabama Power Does Not Enjoy Or Exercise "Bargaining Power" Due To Pole Ownership Disparity

51. Dr. Dippon claims, "Alabama Power was able to impose unjust and unreasonably high rental rates on AT&T because of the bargaining power it enjoys by virtue of the significant disparity in pole ownership."⁸⁰ However, AT&T's actions do not appear to support this claim.

52. First, I understand from Ms. Boyd that in 2018, AT&T failed to pursue Alabama Power's overtures for pole ownership transfer. AT&T's disinterest in purchasing Alabama Power's poles would appear to undercut Dr. Dippon's argument.

53. Second, the JUA cost sharing formula has remained unchanged even though Alabama Power's pole ownership percentage has increased from 68% in 1993 to 78% in

⁷⁷ See Dippon affidavit ¶ 1 at ATT00068.

⁷⁸ See Dippon affidavit ¶ 5 at ATT00069-70.

⁷⁹ See Dippon affidavit ¶ 35 at ATT00084.

⁸⁰ See Dippon Affidavit ¶ 22 at ATT00078-9.

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2018.⁸¹ In fact, I understand that Alabama Power has never attempted to change the formula in the JUA in the more than 40 years of the JUA's existence.⁸²

54. Third, the perpetual license provision in the JUA precludes Alabama Power from ever removing AT&T's attachments. This fundamental constraint effectively obviates any real or perceived bargaining power that might otherwise come with increased pole ownership. As mentioned above, the perpetual license provision states that at any time, either party can terminate the JUA with respect to the right to attach to *additional* joint use poles, but neither party can "terminate the right of either party to attach to *existing* joint use poles or to maintain *existing* attachments."⁸³ [emphasis added] As a result, I understand that even if Alabama Power were to attempt to exercise any existing bargaining power, AT&T can terminate the JUA and perpetually enjoy exactly the same terms, conditions and benefits afforded to AT&T by the JUA for all of its attachments on JUA poles existing at the date of termination.

55. In addition, Dr. Dippon does not provide a single example of how Alabama Power has allegedly used its increased pole ownership as leverage in past or ongoing rate negotiations. Nor does he offer an example of how Alabama Power might use its bargaining power if it believed Alabama Power had any such power and actually chose to do so.

B. Allocation Of Pole Costs Under The JUA Is Reasonable

56. Dr. Dippon claims "the rate formula in Appendix B to the JUA also unreasonably divides the pole cost between Alabama Power (%) and AT&T (%)."⁸⁴ However, I understand that the JUA cost sharing formula was negotiated and agreed to by both parties and is based on the amount of usable space reserved for each party on a typical 40-foot JUA

⁸¹ In 1993, Alabama Power owned 357,026 poles and AT&T owned 168,705 poles. $357,026 / (357,026 + 168,705) = 68\%$. (See JUA, Appendix B at ATT00116.) In 2018, Alabama Power owned 630,143 poles and AT&T owned 179,021 poles. $630,143 / (630,143 + 179,021) = 78\%$. (See Alabama Power Invoice To AT&T dated November 13, 2018 at ATT00199.)

⁸² Per discussions with Ms. Boyd.

⁸³ See JUA, Article XV at ATT00108.

⁸⁴ See Dippon Affidavit ¶ 25 at ATT00079.

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pole (i.e., feet for AT&T and feet for Alabama Power), and equal sharing of the remaining, unusable space.⁸⁵ Since the amount of space allocated to each party has not changed, it is not logical to view the previously agreed-to cost sharing formula as no longer reasonable.

57. Dr. Dippon states “[t]he primary source of the unjust and unreasonable rates is found in the manner in which AT&T’s % cost allocation is calculated.”⁸⁶ First, he alleges “[t]his formula requires AT&T to pay... half of the unallocated space, which includes 40 inches of power separation space that is required due to the presence of Alabama Power’s facilities.”⁸⁷ As discussed earlier, from an economic cost-causation perspective, the safety space on joint use poles owned by Alabama Power exists solely to accommodate AT&T’s attachments (i.e., Alabama Power requires no safety space on its poles when it is the only attaching entity). When a CLEC or CATV desire to attach to an existing Alabama Power pole, the CLEC or CATV must incur make-ready costs covering the cost of a replacement pole when sufficient space is not available on the existing pole to attach and still maintain the safety space.

58. Dr. Dippon also performs a calculation attempting to show that AT&T pays more than Alabama Power on a per-foot basis. He states, “Alabama Power was allocated 3.2 times the space allocated to AT&T but paid 1.3 times the rate.”⁸⁸ He derives the 3.2 multiple by simply dividing AT&T’s feet of “usable” space into Alabama Power’s feet of usable space (i.e., feet / feet = 3.2).⁸⁹ The 3.2 multiple is flawed and misleading. First, as discussed in a previous section, AT&T currently uses significantly more than the feet of allocated space. Second, the multiple is based only on usable space and ignores the fact that almost 70% of the pole consists of space that is not usable and there exist less than three

⁸⁵ See JUA, Appendix B at ATT00119.

⁸⁶ See Dippon Affidavit ¶ 28 at ATT00081.

⁸⁷ See Dippon Affidavit ¶ 28 at ATT00081.

⁸⁸ See Dippon Affidavit ¶ 24 at ATT00079.

⁸⁹ As explained in this affidavit, although AT&T has feet of reserved space pursuant to the JUA, AT&T actually uses an average of feet.

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attachers on each Alabama Power pole, on average, to share that cost.⁹⁰ Consistent with the JUA, under which Alabama Power and AT&T agreed to share the cost of unusable space, the appropriate factor is 1.3.⁹¹

C. Dr. Dippon's Calculation Of Third-Party Rent Is Flawed

59. As explained earlier, the cost sharing percentages under the JUA between Alabama Power and AT&T are approximately % and %, respectively.⁹² Dr. Dippon attempts to suggest that Alabama Power is actually paying less than % of the costs for the poles it owns on account of offsetting fee revenue it collects from CLEC and CATVs.⁹³ In an illustration, he uses several unrealistic and unsupported assumptions—most importantly the number of third-party attachers. He assumes there are five attachers per pole, when in fact Alabama Power joint use poles have an average of less than three attachers (i.e., Alabama Power, AT&T, and on average slightly less than a single third-party attacher).⁹⁴

60. To contrast his radically understated cost sharing percentage to the amount of space used by Alabama Power, Dr. Dippon further misleads by overstating the portion of the pole used by Alabama Power. In his example, he assumes Alabama Power is on average using and should be responsible for % of pole costs. This percentage is based on Alabama Power using feet of 13.5 feet in total usable space, leaving only 3 feet usable space for AT&T and three additional attaching parties.⁹⁵ As elsewhere, this analysis is

⁹⁰ (24 feet unusable space + 3.3 feet safety space) / 40 feet = 68%. See also Alabama Power's interrogatory responses, dated May 22, 2019, p. 10.

⁹¹ AT&T total space allocated equals feet (i.e. feet + ½ (24 feet unusable space + 3.3 feet safety space)) and Alabama Power's total space allocated equals feet (i.e. feet + ½ (24 feet unusable space + 3.3 feet safety space)) feet is 1.3 times feet (i.e. feet feet = 1.3).

⁹² See JUA, Appendix B at ATT00119.

⁹³ If Alabama Power received approximately 7.4% of pole costs from each of three other attachment entities on every joint use pole, it would recover approximately 22.2% of costs in fee revenue, and its net costs would decrease from % to % (i.e. % minus 22.2% = %). See Dippon Affidavit ¶ 26 at ATT00080.

⁹⁴ See Alabama Power's interrogatory responses, dated May 22, 2019, p. 10.

⁹⁵ See Dippon Affidavit ¶ 26 at ATT00080.

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misleading because of inequitable sharing of costs associated with unusable space, including the assignment of 100% of the safety space to Alabama Power.

D. So-Called “Reciprocal Benefits” Under the JUA Do Not Net To Zero

61. Dr. Dippon asserts that “Alabama Power’s list of alleged benefits ignores the reciprocal benefits that Alabama Power receives from AT&T as part of the JUA...Any value of these alleged benefits provided to AT&T is thus entirely offset by the same value provided by AT&T to Alabama Power and offers AT&T no net benefits that justify an increased rental rate relative to its competitors.”⁹⁶ This view seems particularly surprising, as it appears to suggest he believes AT&T’s use of 630,143 Alabama Power-owned poles is of equivalent economic benefit to the 179,021 of AT&T-owned poles used by Alabama Power.⁹⁷ If Alabama Power and AT&T “maintained parity” by each owning poles equivalent in number to the percentage of space and associated cost sharing allocations as agreed in the JUA, neither party would pay the other material amounts under the JUA. However, assuming the monetary benefit on a “per pole” basis is the same for AT&T as it is for Alabama Power, the fact that Alabama Power owns 78% of the joint use poles simply means AT&T is receiving significantly more “net benefits.”⁹⁸

62. As discussed earlier in my affidavit, as an ILEC, one of the benefits AT&T enjoys from the JUA is being able to deploy new services more quickly than a CLEC or CATV who would otherwise be new entrants—not having immediate access to poles that would allow for a more rapid deployment of network equipment and cable. Dr. Dippon does not address this one-sided benefit provided by the JUA and enjoyed by AT&T.

⁹⁶ See Dippon Affidavit ¶ 35 at ATT00084-5.

⁹⁷ Mr. Peters makes a similar argument to Dr. Dippon stating that “AT&T cannot receive a ‘net benefit’ over its competitors if it must provide to Alabama power each and every alleged ‘benefit’ that it receives. This is so because the unique cost to AT&T from providing that alleged ‘benefit’ cancels out any unique value from the alleged ‘benefit’ that it receives, leaving a net value of zero.” See Peters Affidavit ¶ 8 at ATT00065.

⁹⁸ See Exhibit D-1 for examples of my quantification of reciprocal benefits that do not net to zero.

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E. Other Unsupported Positions Raised By Dr. Dippon

i. AT&T Uses More Than Feet Of Space

63. Dr. Dippon claims “AT&T does not, in fact, use feet of space across Alabama Power’s poles, and Alabama Power has let others attach within that space that is paid for by AT&T.”⁹⁹ He does not provide any independent support for this statement. As discussed earlier, AT&T receives feet of space reserved for AT&T’s exclusive use, and I understand that actual data from Alabama Power personnel indicate that, rather than feet, AT&T actually uses an average of feet of space on Alabama Power’s poles.

ii. AT&T’s Lowest Position On The Pole Is An Advantage

64. Dr. Dippon claims “evidence confirms that AT&T’s typical position on the pole, as compared to the positions of its competitors, has subjected its facilities to increased damage, higher transfer costs, and more regular requests to temporarily raise the facilities to accommodate oversized loads.”¹⁰⁰ He states that “evidence confirms” AT&T’s lowest position is a disadvantage but does not provide any such evidence or any other support for his statement, other than a reference to Ms. Miller’s affidavit.

iii. Alabama Power’s Pole Height Is Still A Result Of ILECs

65. Dr. Dippon states a “higher rate is not justified because Alabama Power installed 40-foot poles because 35-foot poles are permitted and have been installed under the JUA. The taller 40-foot poles can accommodate AT&T and its competitors – not simply AT&T – and so their installation does not advantage AT&T over its competitors.”¹⁰¹ The existence of 35-foot JUA poles does not prove additional space is not required for AT&T. Per Ms. Boyd, JUA and non-JUA poles have varying heights, depending on multiple factors, including terrain and location, and that but-for the JUA, Alabama Power’s poles would be at least 5 feet shorter than they currently are. The key point that Dr. Dippon does not appear to

⁹⁹ See Dippon Affidavit ¶ 37 at ATT00085-6.

¹⁰⁰ See Dippon Affidavit ¶ 37 at ATT00086.

¹⁰¹ See Dippon Affidavit ¶ 38 at ATT00086.

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recognize is that under the JUA, Alabama Power's poles are at least 5 feet taller than what Alabama Power would have otherwise installed, since feet is reserved for AT&T and safety space is also required because of AT&T's attachments. It is worth noting that per Ms. Morgan, Alabama Power's non-JUA poles are an average of approximately feet tall, which is feet shorter than the 35-foot poles he identified. The JUA defines a standard joint use attachment pole to be "a 40-foot, Class 5 treated wood pole."¹⁰² If it were not for AT&T, Alabama Power's initial poles would not have needed the 40 inches of safety space or the feet of space reserved for AT&T.

F. Benefits Quantified Take Into Account Average Per Pole

66. Dr. Dippon's final argument is that "some of the alleged benefits, even if they existed, do not exist for every pole every year."¹⁰³ He appears to misinterpret Alabama Power's benefits. Alabama Power is not suggesting the benefits exist for every pole every year. As shown in Section IV.B, my quantifications of benefits calculate an average annualized cost per pole, which does not assume the costs are incurred every year, but translate the benefits, which may be one-time costs, into an annualized average.

VII. Conclusion

67. AT&T receives significant benefits under the JUA, which CLECs and CATVs do not. In accordance with the JUA cost sharing formula, Alabama Power charged AT&T in 2018 approximately per pole.¹⁰⁴ As indicated in Exhibit D-1, the JUA provides AT&T with benefits that exceed AT&T's costs. This result is, of course, expected since AT&T is sharing the cost of a single pole network rather than having to build and operate its own.

68. Interestingly, AT&T argues pole ownership and its associated cost under the JUA puts it at a disadvantage vis-à-vis its CLEC and CATV competitors. As discussed in

¹⁰² See JUA, Article I at ATT00105.

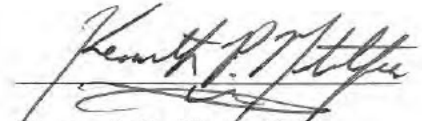
¹⁰³ See Dippon Affidavit ¶ 39 at ATT00086.

¹⁰⁴ See Alabama Power Invoice To AT&T dated November 13, 2018 at ATT00199. Further, AT&T paid rates under the JUA ranging from \$41.77 in 2011 to \$49.69 in 2017. (See Rhinehart affidavit, Exhibit R-3 at ATT00037.)

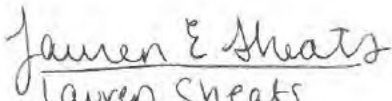
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my affidavit, there are certain significant operational advantages enjoyed by AT&T which I do not currently quantify. I understand that additional and highly relevant information may become available through discovery that may allow me to quantify these benefits.

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Kenneth P. Metcalfe
Co-CEO

Sworn to before me on
this 20th day of June, 2019


Lauren Sheats
Notary Public

Registration #: 7597948
Expiration: 09/30/2022





Kenneth P. Metcalfe
Co-Chief Executive Officer

Kenneth Metcalfe is co-founder and Co-Chief Executive Officer of The Kenrich Group LLC; he is the “Ken” in Kenrich. Ken has over 35 years of experience consulting on financial, accounting, and economic damages matters in numerous areas, including aerospace, biotechnology, fraud and money laundering investigations, nuclear and fossil fuel generation, financial institutions, construction, manufacturing, and government contracts.

He has analyzed accounting and economic issues in various types of disputes, including alleged breach of contract, patent infringement and trade secret misappropriations. Damages addressed include business lost profits, price erosion, increased costs, lost value, and other business interruption impacts, including the valuation of lost royalties. He has also performed detailed forensic analyses and historical cost reconstructions, as well as advised clients in the area of evaluating the economics related to significant alternative investments.

Ken has provided expert testimony on economic damages and other issues in various forums, as well as assisted clients, counsel and other experts in deposition and trial testimony and in alternative dispute resolution proceedings. He has also participated in mediations and in extensive settlement negotiations on various matters. He has testified in federal, state and local courts, in state regulatory proceedings, and in U.S. and international arbitration.

Ken has provided other consulting and accounting services, including analysis of cost allowability and allocability, as well as the propriety of business decisions, such as least cost option and life cycle cost analyses.

Client Responsibilities

Ken is responsible for numerous client assignments in a variety of areas, including commercial contract disputes, regulated industry cost analysis, fuels-related cost analysis, fraud investigations, construction claims, intellectual property disputes, valuations, supplier claims, business interruptions, and terminations for convenience and default. His clients have included electric utilities, construction companies, biotechnology companies, aerospace companies, financial institutions, architect engineers, project owners, government contractors, computer software and hardware developers, manufacturers, telecommunications companies, an accounting oversight organization and various government and quasi-government entities.

The Kenrich Group LLC

1919 M Street, NW
Suite 620
Washington, D.C. 20036
Tel: (202) 420-7681
Fax: (202) 429-5673
E: kmetcalfe@kenrichgroup.com

Professional History

- Tucker Alan Inc.
Managing Vice President
- Peterson Consulting
Vice President

Education

- Georgetown University
Bachelor of Science in Business Administration, Cum Laude
 - Majored in Accounting with concentrations in economics, finance, auditing, and statistics

Professional Associations

- American Institute of Certified Public Accountants
- Association of Certified Fraud Examiners
- Greater Washington Society of Certified Public Accountants
- National Association of Certified Valuators and Analysts
- Virginia Society of Certified Public Accountants

Professional Certifications

- Certified Public Accountant
- Certified Valuation Analyst
- Associate Certified Fraud Examiner

**Kenneth P. Metcalfe****Selected Experience****Economic, Operational And Damage Analysis and General Business Consulting**

Performed analyses of claims, financial statements and financial projections, accounting and auditing standards, contracts, policies and procedures and project cost and scheduling issues. Work has included planning, implementing and supervising the analyses and other tasks to be performed on matters, leading teams from several to over 50 people. Assignments have included performing detailed work for numerous in-house and outside counsels, company management and other personnel, accounting and auditing firm personnel, as well as other consultants and fact and expert witnesses.

Analyzed the financial condition of corporations, partnerships and sole proprietorships and performed economic damage analyses under a variety of circumstances, including intellectual property disputes, valuations, regulatory matters, commercial breach of contract, contract termination, business interruption, fraud investigations, personal injury, discrimination and wrongful death.

Prepared and analyzed claims for increased direct and allocated indirect costs due to numerous factors, including changed work, differing site conditions, delay and disruption, defective specifications and acceleration.

Performed valuations of various assets and businesses, including securities, receivables, real estate, partnership interests, service businesses, market segments, franchises, oil and gas properties and electric utilities.

Analyzed financial transactions and performed extensive funds tracing and other forensic accounting work on a variety of assignments, including commercial damage matters and investigations of alleged fraud.

Performed various analyses that have involved developing economic models reconstructing and analyzing financial data and operating information.

Assisted clients and counsel in general direct and indirect cost determination studies; the preparation and evaluation of least-cost project comparison models, including life cycle cost analysis; incorporating the impacts of long-term and spot market fuel prices; the selection, development and operation of information management systems and a variety of document and other information databases.

Regulated Industries

Consulted on numerous utility matters in the electric, water, and telecommunications industries. Work has included direct and indirect cost and accounting studies, disputes involving nuclear, fossil fueled, geothermal and hydroelectric power plants, relating to such issues as prudence investigations, construction management, replacement power costs and the impacts of alternative fuel assumptions, cost allocations and the rate making process. Work has involved preparation and analysis of claims for more than three dozen utilities throughout the U.S. and internationally and has included increased costs, lost sales and other claims related to over fifty nuclear plants.



Kenneth P. Metcalfe

Consulted on the proper costs to be included by the U.S. Department of Energy regarding its charges to public utilities for nuclear fuel enrichment, as well as cost claims for numerous utilities regarding the disposal of spent nuclear fuel. Prepared first significant utility claim against the Department of Energy for increased costs related to spent nuclear fuel, ultimately leading to settlement with the government. Has since represented nuclear utilities in matters for over twenty nuclear power plants related to the "Standard Contract" with the Department of Energy and the Department's obligation to accept spent nuclear fuel from U.S. commercial nuclear reactors.

Provided consultation related to utility operation and maintenance costs, as well as the examination of utility missions, objectives, organization, policies, procedures and controls.

Consulted on prudence investigations of nuclear power plants, including the underlying causes of and amounts for direct and indirect cost increases and schedule delays, replacement power costs and the proper methods for assessing and supporting the cost of particular impacting events and activities, including the specific identification of direct costs and indirect cost allocation methodologies.

Consulted on the preparation and evaluation of damage claims related to increased costs, as well as defective equipment and plant operating procedures, including direct and consequential impacts.

Developed models and consulted to utilities and government agencies regarding decisions related to electric generation resources, such as the cost evaluation of alternative power plants, incorporating life cycle cost analysis with particular concentration on alternative fuels and their related costs under different short- and long-term delivery structures.

Securities-Related, Forensic Accounting, Fraud And Other Investigations

Reconstructed historical financial information for forensic analyses of alleged money laundering transactions, including those related to companies and individual executive management personnel. These engagements have included those involving the detailed analysis of tens of thousands of account transactions over multi-year periods and through multiple entities and accounts to determine the structure and propriety of funds inflows and outflows.

Assisted in investigating various allegations regarding company management, including the misappropriation of company assets and willful fraudulent transactions committed against the government.

Performed detailed transaction reviews related to alleged embezzlement, check kiting and other illegal accounting schemes, fraudulent invoicing schemes and alter ego analyses.

Investigated the compliance with detailed contractual terms related to the recording of transactions, recognition of revenue and costs. Related analyses have included forensic investigations of thousands of transactions to assess allegations of intentional circumvention of contractual requirements and other obligations. Investigations have included the use of complex computer databases and models, as well as hard copy records.

Assisted counsel in understanding and applying Generally Accepted Accounting Principles and Generally Accepted Auditing Standards in the context of business disputes, fraud investigations, accounting reconstructions and other forensic analyses. Examples include the application of



Kenneth P. Metcalfe

various standards, including materiality, risk assessment, commonality, accumulating and evaluating sufficient documentary evidence, adequate disclosures, and adequate training and professional care, as well as actual and perceived independence.

Analyzed financial transactions and performed funds tracing and other forensic accounting work on a variety of assignments, including commercial damage matters, analyses of regulated industries and investigations of alleged fraud.

Prepared and implemented detailed work programs for tracing transactions to detailed supporting documents, “auditing” costs allegedly incurred, as well as testing compliance with the financial and accounting related requirements of agreements.

Performed numerous interviews of company executives and employees, accounting firm personnel, company customers and competitors and others to obtain information in the context of fraud investigations and other litigations.

Assisted national accounting oversight organization in reviewing and evaluating several public accounting firms’ systems, procedures and internal controls relating to independence. Helped perform research on certain accounting and SEC issues in their relationship to independence regulatory requirements. Acted as an advisor to counsel regarding independence-related issues to assist in communications among counsel, the accounting oversight organization, the accounting firms and the SEC. Assistance included developing and drafting detailed work programs for use during the independence reviews.

Intellectual Property

Calculated lost profits and other damages resulting from potential infringement of patent, trade secret and proprietary agreement rights. Example matters in this area have included those involving software licensing and royalty issues, nuclear technology and steam reforming high temperature waste destruction and processing, as well as government contracting in the aerospace industry.

Analyzed direct and indirect labor and other operating cost structures and considered mitigation efforts during alleged infringement periods.

Analyzed the impact on damages of various interpretations of what products and/or processes were protected as intellectual property.

Analyzed the economic damages resulting from the loss of particular clients and customers due to alleged patent and trade secret infringement and misappropriation, based on analyses of similar clients and customers, as well as other previous company experience.

Analyzed financial, technical and production capacity and the feasibility and cost of potential add-on capacity in connection with the calculation of lost profits.

Performed reasonable royalty analysis considering potential licensor and licensee projections and expectations regarding the level and profitability of future work and required investment, as well as applicable *Georgia Pacific*, *Honeywell* and other factors. Analyzed the projected incremental benefit from intellectual property by comparing expected licensee profit margins on products



Kenneth P. Metcalfe

using intellectual property to profit margins on products that did not utilize intellectual property.

Construction And Government Contracting

Performed analyses of financial statements and projections, contracts, auditing standards, policies and procedures and project cost and scheduling information for a variety of construction-related entities and projects.

Experience has encompassed numerous types of major construction projects, including nuclear, fossil fueled power plants, multi-unit housing projects, wastewater treatment plants, commercial and office buildings, liquid natural gas tankers, as well as ship, aircraft and simulator construction.

Analyzed and prepared claims relating to contracts, including assessment of formal and constructive change orders and the impact of delays, disruptions, defective specifications, differing site conditions, inefficiencies and accelerations.

Reviewed and analyzed various cost and schedule issues, as well as contract administration matters, including avoidance of disputes, appropriateness of contractual terms and conditions, and improvement of management procedures and controls.

Analyzed original scope project costs, contract additions, changes and associated payments.

Assisted numerous clients on a variety of government contracting-related issues, including the determination of damages on commercial disputes arising from government contracts, such as increased cost and lost profits damages resulting from contract breach or termination (for convenience and default); regulatory consulting on compliance issues; the review and preparation of claims for changed work, delay and disruption; and consulting on forensic accounting and funds tracing matters (e.g., alleged false claims, improper cost charging and improper billings.)

Testimony And Alternative Dispute Resolution Experience

Testified as an expert witness in various forums, including bench and jury trials in federal and state courts, as well as the Court of Federal Claims. Testimony has also been provided in state regulatory proceedings and in alternative dispute forums, including U.S. and international arbitration.

Testimony has covered accounting, economics, finance and economic damages issues in matters including breach of contract and business interruption, lost profits, reasonable royalties, direct and indirect increased cost claims, regulated industry issues, property damage, construction matters, contract claims and business management and operations.

Actively participated in numerous settlement negotiations presenting accounting, economic and business operations analyses and assisting in developing alternative methods for dispute resolution. Those services have been provided on a variety of matters, including for example, an international matter assessing the impact of alternative fuels and operating and maintenance costs for the potential repowering of a nuclear powered electric generating plant.



Kenneth P. Metcalfe

Addressed ability to pay issues, including those in the context of settlement discussions, by analyzing financial statements, cash flows and other business and accounting records.

Prepared numerous other expert witnesses for testimony, as well as for participation in various alternative dispute resolution and negotiation forums.

Selected Lectures And Seminars

Provided instruction on the preparation and analysis of claims and accounting practices to graduate students, construction executives and attorneys. For example, Ken has lectured on various economic damages-related issues to graduate students at Stanford University's Construction, Engineering and Management Program. Ken has also taught to graduate students at the George Washington School of Business regarding the preparation and analysis of economic damages claims related to government contracts, as well as in the private sector. Additionally, he has had extensive involvement related to cost issues in the Trial Advocacy Program sponsored by the Public Contracts Section of the American Bar Association. He has also presented to various attorney forums, as well as to project owners, contractors and financiers at the annual Forbes Conference in New York.

EXHIBIT D1-D7

Confidential

ENTIRE EXHIBIT DESIGNATED CONFIDENTIAL

EXHIBIT E

DECLARATION OF WILFRED ARNETT

ON BEHALF OF

ALABAMA POWER COMPANY

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND POSITION.

A. My name is Wilfred ("Wil") Arnett. I am currently a Director at TRC Solutions, located at 6095 Professional Parkway, Suite 102-B, Douglasville, Georgia 30134. TRC is a national engineering, consulting and construction management firm providing integrated services to the power, oil and gas, environmental and infrastructure markets. I manage a portion of TRC that specializes in joint use and pole attachment consulting services to investor-owned electric utilities ("IOUs"), electric cooperatives and municipally-owned power providers. Our clients range from very small municipal and cooperative power providers to regionally owned IOUs serving millions of customers.

As Director of Joint Use Services at TRC, I provide advice regarding pole attachment and Joint Use issues, pole attachment rate calculations, contract interpretation, contract negotiation assistance, rights of way assistance, and various other consulting services. TRC also provides engineering design, inspection, outside plant construction management and rights of way services to IOUs, electric transmission companies, electric cooperatives, municipal power providers and communications companies, throughout the USA.

My experience in outside plant, rights of way acquisition, joint use contract and pole attachment issues spans almost 53 years, with the last 51 years in managerial capacities. I spent the first 30 of those years working on outside plant and joint use issues for Southern Bell, a/k/a BellSouth. I am well experienced in joint use and pole attachment matters, including, but not limited to, operational matters, design of traditional telephone facilities, and the historical evolution of joint use cost sharing rate methodologies. I also served as a Staff Sargent in the Georgia Army National Guard (Battery B, 2nd Battalion, 214th Artillery) from 1967 until 1973.

In 1966 I joined Southern Bell in Savannah, GA. as an outside plant technician, attending lineman and installation training, and working as a technician in the "Plant Department" for 2 years. In 1968, I was promoted into Southern Bell's Engineering Department in Savannah, and in 1971 I was transferred from Savannah to Dublin, GA to submit major projects for the 13 exchanges

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engineered by the Dublin Engineering office. In 1973 I was transferred from Dublin to Atlanta, GA on the Outstate Georgia HQ Staff, responsible for major project reviews and operational reviews for the 9 districts of Outstate Georgia (Outstate covered everything outside metro Atlanta). In 1975, I was transferred from Atlanta to Carrollton, GA and promoted to supervising engineer with responsibility for engineering (distribution design and long-range planning) and the Loop Assignment Center for 8 exchanges in west Georgia and east Alabama. In 1987, I moved from Carrollton to Atlanta, GA as a manager on the North Sector Staff with responsibilities for (1) joint use and third-party pole attachment agreements, (2) rights of way acquisitions (including management of eminent domain proceedings), and (3) administration of engineering and rights of way contract agreements. In that capacity, I managed joint use agreements and pole attachment agreements between BellSouth and investor-owned utilities, electric cooperatives, municipal power providers, and third-party attachers in Georgia, South Carolina and North Carolina and led BellSouth's team in joint use contract negotiations for North Sector. In addition, I had responsibilities for State Department of Transportation ("DOT") and Federal Highway Administration liaison for the North Sector (Georgia, South Carolina and North Carolina) of BellSouth Telecommunications (BST). I also represented BST on the Transportation Research Board (Committee A2A07 -Utilities) from 1988 through 1994. In 1987, I was elected President of Georgia Chapter 22 of the International Right of Way Association ("IRWA"), and I was selected as Right of Way Professional of the Year. In 1990, I was elected as Region 6 Chairman (Florida, Georgia, South Carolina, North Carolina, Alabama and Mississippi) of the IRWA.

I worked closely with BellSouth's State Management and Legal Departments in Georgia, North Carolina, and South Carolina to manage matters related to pole attachments, rights of way, contract labor agreements, and DOT coordination. In addition to the above duties, I was responsible for training of field forces and managers in Georgia, South Carolina and North Carolina, on policies and procedures relative to joint use and the use and occupancy of public and private right of way. My staff was located in Atlanta, Georgia, Columbia, South Carolina, and Charlotte, North Carolina, and we supported the General Managers in each of those states and were responsible for the functions itemized above.

In 1995, I joined BellSouth Entertainment/BellSouth Broadband ("BSE"), to assist in the deployment of "video dial-tone" in Atlanta and several other locations within the BellSouth 9-state territory. In that capacity, I was responsible for outside plant design and construction to support video dial-tone projects, rights of way acquisition for the new facilities, and coordination of joint use

matters, including all make-ready activities necessary for the construction of the BSE's new hybrid fiber-coaxial networks to facilitate BellSouth's re-entry into video services with a new service model that combined switched services with video services. In 1996, after completion of the initial construction for BSE's Chamblee Video Dialtone Field Trial for BSE, I retired from BellSouth with 30 years of service.

In 1996, after retiring from BellSouth, I joined Universal Field Services (a Tulsa, Oklahoma right-of-way company) and Universal Ensco (a Houston, Texas professional engineering company), as Vice President. In that capacity, I was responsible for business development in the Southeast USA from their Atlanta office. I managed consulting right of way services and consulting engineering design services for several utilities, including communications companies, cable television companies and electric providers, mostly in Georgia.

In 1997, I resigned from the Universal companies and joined Utility Support Systems, Inc. ("USS") as Vice President. USS provided engineering design, inspection, outside plant construction and rights of way services to IOUs, electric transmission companies, electric cooperatives, municipal power providers and communications companies, primarily in the southeast USA. USS was registered as a professional engineering company in 11 southeast states. Among other services, USS administered joint use and third-party pole attachment agreements for IOUs, electric cooperatives and municipal power providers in eight southeastern states.

USS and RASR (described below) were sold to TRC in July 2013 and I continued working at TRC as Managing Principal. In 2017 I was promoted to Director at TRC with responsibility for Joint Use Services.

In 1998, in addition to my duties at USS, I joined with two business associates and incorporated RASR, an acronym for Research & Analysis of Shared Resources. RASR's clients include more than 14 investor-owned utilities, 90 electric cooperatives, and 40 municipal electric distribution providers in more than 12 states. All totaled, RASR represents electric companies that own more than 10 million distribution poles.

I have over thirty-two years of negotiation experience with ILEC, CATV and electric utility companies and am experienced in dealing with utility agreements, engineering and construction contracts and other issues that directly impact utility operations, revenues and costs. During my career, I have been involved in negotiations of more than 100 joint use agreements, initially representing BellSouth, and later in my career representing IOUs, municipal power providers (MOU) and electric cooperatives. Many of those agreements were statewide agreements. I have also negotiated similar

numbers of pole attachment agreements, some of which were statewide agreements between cable associations and statewide power associations.

Q. ON WHOSE BEHALF ARE YOU PROVIDING THIS DECLARATION?

A. Alabama Power Company.

Q. WHAT IS THE PURPOSE OF YOUR DECLARATION IN THIS PROCEEDING?

A. The purpose of this Declaration is to address certain statements made on the record by AT&T's representatives. In this Declaration, I will (1) comment on certain design criteria used by outside plant engineers and the impact on the space occupied, (2) demonstrate that AT&T uses at least its [REDACTED]' of space allocated under the terms of the 1978 Agreement, and (3) provide additional perspective on the use and sharing of the costs of unallocated space on joint use poles. I will also comment on the historical rate methods employed by power companies and telephone companies as joint use partners.

Q. DO YOU HAVE CONCERNS REGARDING MS. MILLER'S AND MR. PETERS' ASSERTIONS REGARDING AT&T'S ACCESS TO, AND NEED FOR, ITS STANDARD SPACE ALLOCATION ON ALABAMA POWER COMPANY'S POLES?

A. Yes, I do for the following reasons. AT&T's Engineering Design practices, with respect to its anticipated use of a pole, are not in alignment with Ms. Miller's statements regarding its wants, uses, and requirements. AT&T's OSPE Handbook, section 10, provides that the poles it attaches to should be designed for "ultimate needs." In other words, OSP engineers are to consider the ultimate number of attachments over the life of the asset. See Exhibit E-1.

The concept of planning and providing for future "structure" needs may be best demonstrated by examining AT&T-Alabama's year end ARMIS reports for 2017 and 2018. Both poles and conduit are structures, and they both support communications cables and hardware, and both have long service lives. During 2018, AT&T added 82 trench kilometers of conduit and 480 kilometers of duct (See Exhibit E-2, Structure Sizing Analysis), resulting in an average duct formation of 5.85 ducts/ trench kilometer. I am confident that AT&T-AL did not install cable facilities in all 480 Km of new duct during 2018. More likely, they installed 82+ Km of cable in those ducts (roughly the same amount as the trench Km), and the remaining ducts are for AT&T's

future needs. AT&T-AL's 2018 depreciation rate for underground conduit is 2.44%, indicating a life expectancy under straight line depreciation of 41 years. As previously stated, poles are also structures with long service lives, and the same design concepts apply to space on poles, whether owned by AT&T, or accessed through the terms of a joint use agreement. AT&T designs for, and negotiates for, their ultimate needs, which should include a "maintenance-spare" position and/or "available for future reinforcement" position.

As to its actual attachments, AT&T uses space on joint use poles not only for horizontally run cables and wires, but also for other equipment it installs on poles, both (a) within the communications space as well as (b) vertical attachments in the unallocated space on the pole. The contract contemplates and provides for all the above within the definition of Attachments (Article I.A – "Attachment is any wire, cable, strand, material or apparatus affixed to a joint use pole now or hereafter, used by either party in the construction, operation or maintenance of its plant."). As to horizontally run aerial cables, AT&T's "air-core" copper conductor cables are designed for such construction, and they range in size from 25-pair cables to 2700-pair cables. The internal conductor sizes range from 26-Gauge (the smallest) to 19-Gauge (the largest). Weights range from 0.10 lbs./ft. (BKTA-25) to 5.92 lbs./ft (BKMA-1800). The outside diameter of the largest listed cable is 3.04 inches. See Exhibit E-3 consisting of 5 pages from Section 14 of AT&T's OSP Engineering Handbook. Despite what AT&T's witnesses Miller and Peters say, AT&T's copper cables are not light, and in many cases, they are not small. I have 53 years' experience in matters related to traditional telephone Outside Plant Engineering and Construction, and I know of no AT&T competitor that installs traditional copper networks, such as AT&T's, inside AT&T-Alabama's certificated area. AT&T's OSP Engineering Handbook provides tables for conductor bundles up to 6.0 lbs./ft (See Exhibit E-4, OSPE Handbook page 10-48, 10-M Strand, Medium Storm Loading Area, i.e. North Alabama areas). In the larger sizes and bundles, AT&T's cables are among the largest, and heaviest, horizontally run cables on Alabama Power's distribution poles. AT&T has, in its referenced design tables, support-strands/messengers rated at strengths from 6000 pounds (6M) to 25,000 pounds (25M). If AT&T did not use those size strands, they would not publish the design tables. Normal catv construction is accomplished using 6.6M strand supporting lighter coaxial and fiber optic cables. It would require a bundle of 83 typical coaxial distribution cables (CommScope P3-500CA @.0720 lbs/ft), or a bundle of fifty-nine 96-count fiber optic cables (CommScope ORF-O-096-LN @.1010 lbs./ft.) to create a load of 6.0 pounds/ft.

In addition, cable sags for AT&T's smallest copper cables (0.2 lbs./ft.) on 6.6M strand

(long spans, medium loading area), can be as much as 12.75 feet. See Exhibit E-5, OSPE Sag Chart for 6.6M strand, Medium Loading Region. This cable sag must be added to the NESC (Code) required minimum clearance above ground to determine AT&T's minimum point of attachment on the pole (See Exhibit E-6, OSPE Cable Sags – Instructions for the use of Sag Charts). Cable sag determines the point of attachment on a pole. As sag increases, so does the required height of attachment on the pole and therefore, the space utilized by the attachment.

Telephone companies, like AT&T-Alabama, typically install and maintain, the largest, and heaviest, communications cables with the most sag. The Code requires midspan separation between communications cables, and since the telephone companies' copper cables have the most sag, historically they have been installed in the lowest portion of the pole, a practice that continues to this day.

In addition to cables and drop wires, AT&T occupies space on Alabama Power's poles by installing hardware such as terminals, load coils, drop and block wiring, and other apparatus in the communications space, and frequently in the unallocated space, on poles, thereby blocking access to the poles by other communications companies. Since AT&T occupies the lowest position on Alabama Power's distribution poles, their point of attachment can determine the remaining usable space available for other licensees. When another company applies for access to Alabama Power's poles, they may incur expensive rearrangements and make-ready to gain access for their new attachments. Attached as Exhibit E-7 are photographs of poles with AT&T's hardware occupying usable space below its cable attachments.

Ms. Miller provided 8 photographs, and certain "attachment height" measurements, to support her claim that (1) Alabama Power permits third-party attachments in AT&T's [REDACTED] feet of space and (2) that AT&T-Alabama does not require the [REDACTED] of space that they negotiated for, and agreed to, in the 1978 Agreement. I disagree that the photographs demonstrate that AT&T does not use its Standard Space Allocation of [REDACTED] feet, nor do the photographs prove that AT&T is displaced from its [REDACTED] feet of space by the installation of third parties. After reviewing the photographs, undertaking a field investigation of each site, and performing the necessary calculations, I determined that for the examples provided by Ms. Miller, AT&T is occupying, on average [REDACTED] of space. Further, in only one case (in Jasper, Alabama) did I find a third-party (catv) occupying AT&T's assigned space. In this one location, if AT&T should ever need its Standard Space, the catv company would be obligated to raise its attachments, at its cost, to make that space available under the terms of Alabama Power Company's pole license agreement.

Further, Article XIII. B of the Agreement addresses just such situations, and provides that “...such attachments shall not be located within the space allocation of Licensee, unless Licensee concurs in such occupancy. Such concurrence shall in no way waive Licensee’s right to occupy its allocated space in the future...”

AT&T’s space on a joint use pole is defined in Article I. M (2) of the Agreement. Specifically, it is “... the exclusive use of [REDACTED] feet of space on 40-foot poles, ***measured upward from the point of attachment on the pole, required to provide at all times the CODE minimum clearance above the ground for the lowest horizontally run line wire or cable attached in such space.***” This identical language was embodied in the prior (1966) Agreement between Southern Bell and Alabama Power Company. Perhaps Ms. Miller assumed that Exhibit 2 of Appendix B (in the 1994 Appendix to the Agreement) establishes AT&T’s physical space on a Joint Use Pole. However, that is not correct. AT&T’s space is determined by the above referenced contract language. The 1994 drawing is solely to document the parties’ agreement, with respect to the amount of space assigned to each, and the impact of the Standard Space Allocations on the cost-sharing calculations, which are provided in the lower right corner of the Exhibit 2 (of the 1994 Appendix B). The 4th paragraph of the 1994 Appendix B states “The limited operation charge (LOC) and the ***space allocation (SA) factors of the rate calculation for both parties*** shall remain constant throughout the five year period 1994 – 1998. ***Exhibits 1 and 2 provide details of the calculation of LOC and SA.***” In 1994, both parties had 10’s of thousands of third-party attachments on their poles, but the mention of space for those third-party attachers is conspicuously absent from Exhibit 2 of the Agreement. Exhibit 2 of Appendix B is therefore further evidence that the parties intended to share in the full costs of joint use poles, “equitably.”

AT&T’s 1994 Outside Engineering Handbook explains on page 40 of Section 10 how to calculate the minimum point of attachment for copper communications cables. This “minimum point of attachment” is synonymous with the “***...point of attachment on the pole, required to provide at all times the CODE minimum clearance above the ground for the lowest horizontally run line wire or cable attached in such space.***” It is only by performing this calculation that one determines the beginning of AT&T’s space on an Alabama Power Company pole. Thereafter, AT&T’s space is “***measured upward.***” I visited each of the 8 locations in witness Miller’s Exhibit M-1 to gather the necessary information to calculate AT&T’s minimum point of attachment (consisting of span measurements, support strand sizes, points of attachment, photographs of strand and cable sizes, and other relevant data). I then calculated AT&T’s cable size and weight from my

physical observations and measurements and by using the cable data for aerial copper and fiber optic cables from Section 14 of the Handbook (See Exhibit A-2). Once that data was assembled, I used the appropriate tables in the Handbook for 6M, 6.6M and 10M strand for the appropriate storm loading area to establish AT&T's minimum point of attachment for each of the examples in AT&T's Exhibit M-1. None of this data was provided by AT&T in support of its assertions. I determined that in only one location (20 Bluff Way Drive, Jasper, AL) was a third-party attacher within AT&T's Standard Space Allocation (by 8"). I was also able to calculate that AT&T's average space utilized on the subject poles in Exhibit M-1 was [REDACTED] feet. In 5 of 8 locations, AT&T's cable attachments were installed above its Standard Space Allocation. The detailed calculations for each location in AT&T's Exhibit M-1 are provided as Exhibit E-8 to this Declaration. A summary for the 8 locations shown in Exhibit M-1 is provided as Exhibit E-9 to this Affidavit.

Since AT&T's attachments are necessarily the lowest horizontal wire or cable on the pole, and they are attached above their Standard Space Allocation (on 5 of the 8 poles), AT&T is therefore using more than its specified [REDACTED]' of Standard Space.

Additionally, Ms. Miller states that "...AT&T cannot, and does not, allow communications attachers to place facilities in the space allocated to Alabama Power on AT&T's poles..." That is simply not true. On a single day's field trip limited to the areas of Ranburne, Oxford, and Anniston, Alabama, I found examples of both AT&T attachments, and third-party attachments, encroaching on Alabama Power's space on AT&T-AL poles. Attached as Exhibit E-10 are photographs of AT&T poles in those areas with both AT&T and 3rd party attachments in Alabama Power's allocated space.

Q. HOW DO YOU RESPOND TO MS. MILLER'S COMMENTS ABOUT THE NEED FOR 40' POLES AND THE PRESENCE OF 35' POLES IN THE JOINT USE NETWORK?

A. The 1966 document that Ms. Miller refers to was published as an explanation of the rate methodology in the 1966 Agreement between Southern Bell and Alabama Power Company. I am familiar with the contract referred to in Ms. Miller's Exhibit M-6. It was the same form of Agreement used by Georgia Power Company and Southern Bell, and I worked with that Agreement for over 28 years, initially as an engineer with Southern Bell (1968), subsequently as a Supervising Engineer (1975), later as the North Sector Manager of joint use for BellSouth Telecommunications, Inc.(1987) and finally in my capacity with BellSouth Entertainment (1995). The 1966 agreement also specifies a 40' pole as a Standard Joint Use Pole. However, the 1966 Agreement further

specifies space allocations for each party on both 35' and 40' joint use poles. The 1966 Agreement, also provided that the parties must agree when a new pole of a size smaller than Standard Joint Use Pole is to be installed for joint use.

The 1978 Alabama Power Company - South Central Bell Agreement omits any reference to space allocations on 35-foot poles in Article I. M, and South Central Bell's Space Allocation was fixed at [REDACTED] without regard to pole size. Alabama Power's space allocation is described as [REDACTED]. The 1978 Agreement also retained the designation of a Standard Joint Use Attachment Pole as a "40-foot, Class 5 treated pole that meets the requirements of the Code." Also retained in the 1978 Agreement, as Article VII D, is the following language:

"Notwithstanding reference to a standard joint use attachment pole, nothing in this agreement is intended to preclude the following practices *when agreed to by both parties*: (1) the use of joint use poles of less strength than the standard joint use attachment pole, (2) *the use of 35' or shorter joint use poles if consistent with sound engineering practices and the Code, after providing the space requirements of both parties*, even though such pole would not provide the standard space allocation referred to in this agreement, and (3) the use of joint poles of different composition than the standard joint use attachment pole."

The 1978 Agreement has been in effect for over forty-one years, over 4 decades. While it is true that there are joint use poles in sizes smaller than the Standard Joint Use Pole, both the current Agreement and the prior required mutual agreement for the installation of smaller joint use poles. Since at least 1966, a 40' class 5 pole has been designated as the standard for new joint use poles. This default pole size provided space necessary for AT&T's attachments, and has represented an additional cost to Alabama Power Company.

I obtained from Alabama Power Company's plant accounting department the year end 2018 balances for 35', 40' and 45' poles in Account 364 and provide that information below. The sub-accounts below are strictly bare pole costs and do not include "fixtures."

Account 364 - Poles, Towers, & Fixtures				
Retirement				Avg
Units	FERC RUC	Quantity	Amount	Cost/Item
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

PUBLIC VERSION

Alabama Power Company's incremental cost increase between a 35' bare pole and a 40' bare pole is [REDACTED] increase in the average cost for a Standard Joint Use Attachment Pole. The next size smaller pole – a 35' pole - would be satisfactory for Alabama Power Company's facilities if there were no joint use. Also apparent from the chart, as pole size increases above 35', Alabama Power's historical average costs become exponentially higher. Ms. Miller states that Alabama Power Company is likely installing larger poles to accommodate other attachers. That may be true in certain cases, however, when third-party attachers need space on Alabama Power's poles, they are responsible for the total actual costs.

Between Alabama Power and SCB, the parties agreed to a 40' – class 5 pole as the standard for their joint use, unless they mutually agreed to a shorter, or smaller classed, pole. There is no Standard Joint Use Attachment Pole size specified in Alabama Power Company's pole license agreements. Only joint use agreements contain those terms.

Alabama Power Company's Operating Charges (annual charges) in Appendix B, Exhibit 1, in 1994, was 23.662% (SCB's annual charge was 20.710%). I calculated Alabama Power's 2018 gross annual charge rate to be [REDACTED], based on year end 2018 financial data. See Exhibit E-11. Multiplying the gross annual charge rate by the average historical cost yields the annual cost incurred by Alabama Power for each respective size pole. The results of those calculations are provided in the following chart:

Account 364 - Poles, Towers, & Fixtures					
Retirement	2018 End of Year			Ann	Increase in
Units	FERC RUC	Avg Cost/Pole	Annual Charge %	Cost/Item	Annual Cost/Pole >35'
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

It costs Alabama Power Company *an additional* [REDACTED] *per year* to provide a Standard Joint Use Pole, above its annual cost for a pole one-size smaller. If there were no joint use, a 35' pole that would be satisfactory for Alabama Power Company's facilities and would result in a cost savings of [REDACTED]/year. AT&T's rental charge at year end 2018 was only [REDACTED]/pole, representing a shortfall of [REDACTED]/pole when Alabama Power provides a Standard Joint Use Pole.

Q. DO YOU AGREE WITH AT&T'S COMMENTS ABOUT THE ALLOCATION OF THE COSTS ASSOCIATED WITH THE COMMUNICATIONS WORKERS SAFETY SPACE?

A. No. AT&T states that it must pay for half the NESC Communications Worker Safety Space on Alabama Power Poles, and further states that Alabama Power benefits from that space through the installation of street lights within that space. However, in the Agreement, and the 1994 Appendix, the safety space, like the space below SCB/AT&T's attachment space, is identified as a part of the unallocated space. Article III – Permission for Joint Use, paragraph 2 provides that “So long as the provisions of the Code are met, unallocated space may, without additional charge, be used by the Power Company and Telephone Company (if Code provisions cannot subsequently be met then billing for the required modifications will be in accordance with Appendix A...”).

While it is true that the Code permits street lighting in the safety space, subject to certain requirements, the Code also allows street lighting to be installed in the other “unallocated” portions of the pole. As early as 1945, street lighting could be installed on the pole below the communications space in compliance with the Code. See Exhibit E-12, Joint Pole Practices for Supply and Communications Circuits, Publication M-12 (Joint Committee Report of the EEI and the Bell System - Plates 4 – 7), published in 1945 (Excerpts only).

One should also note in Exhibit E-12, the telephone company's use of other unallocated space for terminals and other hardware. AT&T's use of other Unallocated Space on joint use poles in Alabama has been demonstrated by the Exhibits to this Declaration. If Alabama Power Company were to be deemed responsible for the costs of the safety space, because of street lighting attachments located therein, then AT&T should be responsible for the costs of unallocated space occupied by its terminals, load coils, apparatus cases, cross-connect boxes, and other hardware.

There has been a historical presence of power company lighting hardware, and telephone company terminals, load coils, cross-boxes, inductors, etc. in other “unallocated space” on joint use poles. The Code allows such use, and the parties were aware of their respective uses of poles when they entered into the cost sharing provisions described in Appendix B. All space identified as “unallocated” including the Unallocated Safety Space were to be shared equally. See the formula on Appendix B, Exhibit 2, bottom right corner. It

is also noteworthy that Alabama Power's share of AT&T's annual costs includes half the safety space on AT&T's pole.

Q. WHAT DO YOU SAY TO MS. MILLER'S COMMENTS REGARDING WHAT CONSTITUTES "A JUST AND REASONABLE POLE ATTACHMENT RATE?"

A. The 1978 Agreement is premised on the concept that each party provides its "equitable" share of the joint use pole network. In the second paragraph of the Agreement, the intent of the parties is made clear. Specifically, the Agreement states that "Whereas, when the parties are making arrangements for the joint use of new poles, and the party proposing to erect the new poles already owns a majority of the poles, the parties shall take into consideration the desirability of having the new poles owned by the party owning the lesser number of joint use poles so as to progress toward a division of ownership of poles so that neither party shall be required to pay annual rental payments, giving due regard to the avoidance of mixed ownership in lines...". Known as "parity", that division of ownership, agreed to by the parties, is ■■■% for AT&T and ■■■% for Alabama Power Company (See Appendix B, Exhibit 2 of the Agreement). When parity is maintained, THERE IS MINIMAL, IF ANY, RENT PAID BY EITHER PARTY. Rental is only paid by the party that fails to abide by its contractual responsibilities as to ownership and maintenance of the joint use network. Article X, paragraph A states that "The parties *mutually agree* that the cost of maintaining joint use poles should be *equitably shared* in accordance with *Appendix B*, attached hereto and hereby made a part hereof." The real costs, for either party to a joint use agreement, lie not in the rental rates, but rather in the infrastructure costs. When one party fails to own its "agreed-to" share of poles, rental as prescribed by the agreement is appropriate.

Ms. Miller asserts in paragraph 4 of her Affidavit that she has "...*become familiar with the operational practices and procedures* surrounding the joint use of poles..." and Mr. Peters states in paragraph 5 of his affidavit that "*My knowledge also includes the practices and procedures surrounding the joint use of utility poles, including poles in AT&T's overlapping service area with Alabama Power.*"

"Section 17 – Administration" of AT&T's 1994 Outside Plant Engineering Handbook (pages 17-7 and 17-8) lists AT&T's Bell System Practices (BSPs) related to joint use, both buried and

aerial (See Exhibit E-13). In particular, one of the documents listed in the OSPE Handbook is Bell System Practice BSP 937-217-126, a 1972 practice which discusses the “*equitable sharing* of the costs of joint use”. See Exhibit E-14. The following is excerpted from the end of Section 1.08 and the beginning of Section 1.09, which states:

1.08 ... It cannot be emphasized too strongly that the desired objective is to obtain an *equitable* share of costs, with *both* parties benefiting from joint use.

1.09 It should be recognized that the term “equitable” may have a different meaning in the electric utility industry. The Bell System view is that an equitable division of costs will permit each party to achieve the same proportionate reduction in costs by employing joint construction as compared to nonjoint use. It is recognized that there are other concepts of equitable divisions of joint pole costs, and a number of these are discussed in this section. However, it appears that the concept of equal proportionate savings (percent savings) is the soundest and most logical.”

Moreover, the BSP provides a comparison of 10 different “division of cost” methods on page 17, and identifies the “most equitable” cost sharing to be [REDACTED] % ownership by the telephone company, and [REDACTED] % ownership by the power company. This very closely matches the ratio in Appendix B, Exhibit 2, which specifies [REDACTED] % ownership SCB and [REDACTED] % ownership by Alabama Power.

Given both Ms. Miller’s and Mr. Peters’ length of service with the AT&T (45 years and 20 years, respectively), and their stated particular experience with joint use contracts (“early 2000s – Director with 9 SE States joint use responsibility” and “2009, became the first national subject matter expert on joint use with power companies”, respectively), I am surprised that neither are familiar with, nor mentioned, AT&T’s Administrative Practices for Joint use of Poles as listed in the OSPE Handbook.

During the period of Ms. Miller’s and Mr. Peters’ tenure at AT&T, tenures that included both regional and national joint use responsibilities, I am aware of multiple instances where AT&T-AL negotiated revisions to joint use agreements with terms and conditions similar to those of the Alabama Power - SCB Agreement. In 2009, I was involved in negotiations with AT&T-AL on behalf of two municipal utilities, the Cities of Opelika and Tarrant. See Exhibits E-15

and E-16. Both 2010 municipal agreements contemplate equal ownership of joint use poles by each party, and the rental rates in those agreements are reciprocal. Further, I was also involved with the negotiations between the Alabama Rural Electric Association (22 Electric Coops in Alabama) and BellSouth in 2009 – 2010 and I am familiar with the terms of their 2010 Agreement. The rental rates between AT&T-AL and the State's electric coops are similar to the two municipalities described above. I am also aware that AT&T entered into a region-wide joint use agreement with the 163 electric coops and municipal power providers in the 9 states (including portions of northern Alabama) served by the Tennessee Valley Authority in 2010 with terms similar to those described above.

I found no evidence in the record that AT&T has had issues with the cost sharing embodied in the 1978 Agreement, and the 1994 Appendix, prior to its letter of March 7, 2018. The parties have enjoyed a relationship of cost sharing and mutual assistance for more than 75 years. It was in 2018 that AT&T requested a departure from its historical joint use rental relationship with Alabama Power Company.

AT&T asserts that there is no advantage in the 1978 Agreement above Alabama Power's pole license agreement. That statement is grossly incorrect, based on my 51 years' experience dealing with both types of agreements. AT&T owns over 7.5 million poles nationwide. As a pole owner, it has both legacy and institutional knowledge of the difference in terms embodied in license agreements and those of joint use agreements. Indeed, its joint use administrative practices refer to the differences. If there were no significant differences in the two type of agreements, AT&T would have joint use type agreements with its third-party licensees. I am confident that AT&T has neither before or after the filing of its complaint moved to modify its standard pole attachment license agreement (third party agreements) in Alabama, or anywhere nationwide, to comport to the terms of its joint use agreement with Alabama Power Company or any other IOU.

Q. PLEASE SUMMARIZE YOUR COMMENTS?

A. My comments can be summarized by the following 6 points:

- 1. Contrary to AT&T's witnesses' statement, AT&T is routinely using more than its [REDACTED] of Standard Space Allocation, as confirmed by a detailed review of its own Exhibit M-1.**
- 2. Third-party attachments are not displacing AT&T from its Standard Space Allocation, and even if there is an encroachment by a third-party (into AT&T's allocated space), both the Agreement and the terms of Alabama Power Company's third-party agreements include terms that protect AT&T's future use of that space.**
- 3. Alabama Power Company's additional annual costs for a Standard Joint Use Attachment Pole exceed the rental rate paid by AT&T-AL. Alabama Power Company's 2018 annual cost for a 40' joint use poles is \$[REDACTED] greater than the next size smaller pole. AT&T's per pole rental rate for 2018 was \$[REDACTED]/pole.**
- 4. The joint use terms of the Agreement are significantly better for AT&T than those embodied in a pole attachment agreement. AT&T has requested only a change in the rental rates, but not any other terms of the Agreement, a clear indication that it favors those other terms.**
- 5. AT&T's cables and other facilities are not "small" and "light", but rather are potentially the largest and heaviest cables on a given pole, and usually result in the most sag. AT&T's attachments are therefore located in the lowest position of the usable space of a pole.**
- 6. Retaining rights to the lowest position on the pole provides AT&T with a strategic advantage over its competitors. In over 32 years of joint use negotiations experience, not only with AT&T, but also with other telephone companies, none have ever requested any pole position other than the lowest point of attachment. By attaching above its allocated space, it can either limit access to the pole by its competitors, or otherwise make such access expensive and time consuming.**

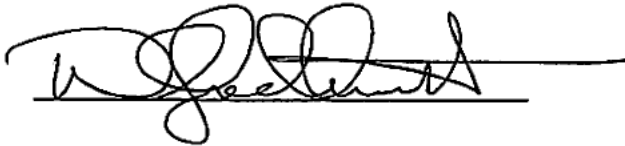
Q. DOES THIS CONCLUDE YOUR DECLARATION?

A. Yes it does.

PUBLIC VERSION

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 19th day of June, 2019.

A handwritten signature in black ink, appearing to read 'Wilfred Arnett', is written over a horizontal line.

Wilfred Arnett

EXHIBIT E-1

OUTSIDE PLANT ENGINEERING HANDBOOK

August 1994

AT&T reserves the right to make changes to the product(s) described in this document in the interest of improving internal design, operational function, and/or reliability. AT&T does not assume any liability which may occur due to the use or application of the product(s) or circuit layout(s) described herein.

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Section 10

AERIAL PLANT

PLANNING AND DESIGN GUIDELINES

AT&T 919-120-100

- Consider aerial design only if buried design is significantly more expensive or is not feasible.
- Select permanent locations for pole lines considering:
 - Future road widening or realignment
 - Expansion of other utilities
 - Special problems such as road, railway, and power line crossings
 - Safety and convenience of workers and the general public.
- Obtain necessary permits for:
 - Building and maintaining pole lines on private property and public right-of-way
 - Crossing railroads
 - Crossing over navigable waterways.
- Coordinate with other utilities with respect to:
 - Possible joint use
 - Minimizing inductive interference.
- Design pole line for ultimate needs, considering pole line classification, storm loading, and clearance requirements.
- Use the most economical span length within the constraints imposed by the design guidelines herein.

EXHIBIT E-2

PUBLIC VERSION

AT&T/BellSouth Corporation - Alabama
ARMIS Data (financial data in 000s)

Row	Row Title	Amount		
		2017	2018	Difference
100	Telecommunications Plant in Svc	\$ 5,766,734	\$ 3,646,730	\$ (2,120,004)
101	Gross Investment - Poles	\$ 219,434	\$ 159,966	\$ (59,468)
102	Gross Investment - Conduit	\$ 193,859	\$ 81,262	\$ (112,597)
200	Accumulated Depr - Total Plant in Svc	\$ 4,314,272	\$ 739,814	\$ (3,574,458)
201	Accumulated Depr - Poles	\$ 164,101	\$ 67,314	\$ (96,787)
202	Accumulated Depr - Conduit	\$ 86,973	\$ 17,202	\$ (69,771)
301	Depreciation Rate - Poles	4.40%	3.18%	-1.22%
302	Depreciation Rate - Conduit	1.70%	2.44%	0.74%
401	Net Current Deferred Operating Income Taxes - Poles	\$ -	\$ -	
404	Net Non-Current Deferred Operating Income Taxes - Poles	\$ 8,607	\$ 26,597	
601	Equivalent Number of Poles	414,140	414,617	477
602	Conduit System Trench Kilometers	3,120	3,202	82
603	Conduit System Duct Kilometers	18,093	18,573	480
	Average Gross Pole Cost (dollars)	\$ 529.85	\$ 385.82	
	Average Net Pole Cost (dollars)	\$ 112.83	\$ 159.32	
	Average Underground Ducts/Trench KM			5.85